

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

In the Matter of
Accessible Emergency Information, and Apparatus
Requirements for Emergency Information and
Video Description: Implementation of the Twenty-
First Century Communications and Video
Accessibility Act of 2010
MB Docket No. 12-107

NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. The Federal Communications Commission (“Commission”) initiates this proceeding to implement the provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”)¹ requiring that emergency information be made accessible to individuals who are blind

¹ 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).

or visually impaired and that certain equipment be capable of delivering video description and emergency information to those individuals. First, pursuant to Section 202 of the CVAA, this Notice of Proposed Rulemaking (“NPRM”) proposes to make televised emergency information² more accessible to individuals who are blind or visually impaired by requiring the use of a secondary audio stream to provide emergency information aurally that is conveyed visually during programming other than newscasts.³ Second, we seek comment under Section 203 of the CVAA on how to ensure that television apparatus are able to make available video description,⁴ as well as to make emergency information accessible to individuals who are blind or visually impaired.⁵ Our Section 203 discussion focuses on the availability of secondary audio streams, because that is both the mechanism for providing video description and our proposed mechanism for making emergency information accessible.⁶ Our goal in this proceeding is to enable individuals who are blind or visually impaired to access emergency information and video description services more easily. The proposed revisions to our rules will help fulfill the purpose of the CVAA to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”⁷

II. BACKGROUND

2. Section 202 of the CVAA requires the Commission to complete a proceeding to “identify methods to convey emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) in a manner accessible to individuals who are blind or visually impaired.”⁸ The

² “Emergency information” is defined in the Commission’s rules as “[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency.” 47 C.F.R. § 79.2(a)(2). Emergency information might pertain to emergencies such as “tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.” *Id.* “Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.” Note to 47 C.F.R. § 79.2(a)(2).

³ *Infra* Section III.A.

⁴ “Video description” is defined as “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.” 47 C.F.R. § 79.3(a)(3).

⁵ *Infra* Section III.B.

⁶ A separate proceeding will address Sections 204 and 205 of the CVAA, which pertain to user interfaces and video programming guides and menus. Public Notice, *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus*, 27 FCC Rcd 4191 (2012).

⁷ H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010) (“House Committee Report”); S.Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010) (“Senate Committee Report”).

⁸ 47 U.S.C. § 613(g)(1). Accessibility of this emergency information is a separate matter from accessibility of an activation of the Emergency Alert System (“EAS”), which facilitates emergency communications from the President, the heads of State and local government, their designated representatives, or the National Weather Service. *See* 47 C.F.R. § 11.1. In this proceeding we consider revisions to Section 79.2 of our rules, whereas EAS is governed by Part 11 of our rules. *Compare* 47 C.F.R. § 79.2 *with* 47 C.F.R. Part 11. In a separate proceeding, the Commission considers ways to make EAS alerts more accessible to persons with disabilities. *Review of the Emergency Alert System*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13307, ¶ 73 (2007) (“reexamin[ing] the best way to make EAS and other emergency information accessible to persons with disabilities”); *Review of the Emergency Alert System*, Fifth Report and Order, 27 FCC Rcd 642, 733, ¶ 265 (2012) (“2012 EAS Order”) (“Providing state and local alert message originators with a conduit for the (continued....)”).

Commission must also “promulgate regulations that require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.”⁹ In addition, Section 203 of the CVAA directs the Commission to prescribe regulations requiring apparatus to have the capability to decode and make available emergency information in a manner that is accessible to individuals who are blind or visually impaired, and to decode and make available video description services.¹⁰ The CVAA requires that the Commission complete its proceeding on access to emergency information by April 9, 2013,¹¹ and on apparatus requirements for video description and emergency information by October 9, 2013.¹²

3. The CVAA also required the Chairman of the Commission to establish an advisory committee known as the Video Programming Accessibility Advisory Committee (“VPAAC”).¹³ The Commission announced the establishment of the VPAAC on December 7, 2010, and the committee began meeting in January 2011.¹⁴ The VPAAC divided itself into four advisory working groups, with Working

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transmission of transcripts of the audio portions of their messages should encourage alert originators to craft messages that will provide accessible alerting for persons with hearing and vision disabilities.”). While the EAS rules apply only to certain emergency communications, as stated above, Section 79.2 of the Commission’s rules applies more broadly to televised emergency information. *Compare* 47 C.F.R. § 11.1 *with* 47 C.F.R. § 79.2.

⁹ 47 U.S.C. § 613(g)(2).

¹⁰ 47 U.S.C. § 303(u)(1). Section 203, in part, directs the Commission to require that, if technically feasible:

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 . . .

(B) have the capability to decode and make available the transmission and delivery of video description services as required by regulations reinstated and modified pursuant to section 713(f); and

(C) have the capability to decode and make available emergency information (as that term is defined in section 79.2 of the Commission’s regulations (47 CFR 79.2)) in a manner that is accessible to individuals who are blind or visually impaired

Id.

¹¹ 47 U.S.C. § 613(g). The CVAA requires the Commission to complete this emergency information proceeding “[n]ot later than 1 year after the [VPAAC] report . . . is submitted to the Commission.” *Id.* The VPAAC submitted its report to the Commission on April 9, 2012. Accordingly, the deadline for the emergency information proceeding is April 9, 2013.

¹² Pub. L. No. 111-260, § 203(d)(2). The CVAA requires the Commission to prescribe the apparatus requirements for “video description and emergency information within 18 months after the submission to the Commission of the [VPAAC] report.” *Id.* The VPAAC submitted its report to the Commission on April 9, 2012. Accordingly, the deadline for prescribing apparatus requirements is October 9, 2013.

¹³ Pub. L. No. 111-260, § 201(a) (providing that, within 60 days of the CVAA’s enactment, the Chairman must establish an advisory committee). Although in the CVAA this advisory committee is referred to as the “Video Programming and Emergency Access Advisory Committee,” its working name was shortened to the “Video Programming Accessibility Advisory Committee” to avoid confusion with the separate Emergency Access Advisory Committee established under Section 106 of the CVAA.

¹⁴ See Public Notice, *Video Programming and Emergency Access Advisory Committee Announcement of Members*, 25 FCC Rcd 17094 (rel. Dec. 7, 2010). See also Public Notice, *Erratum, Video Programming and Emergency Access Advisory Committee Announcement of Members* (rel. Jan. 7, 2011).

Group 3 focused on emergency information and Working Group 2 focused on video description.¹⁵ Section 201(e)(2) of the CVAA required the VPAAC to submit a report on video description and emergency information to the Commission within 18 months after the date of enactment of the CVAA, or by April 9, 2012.¹⁶ The VPAAC submitted this report on April 9, 2012.¹⁷ In the VPAAC Second Report, Working Group 3 presented its findings on methods to convey emergency information to individuals who are blind or visually impaired, including alternatives that it considered and rejected.¹⁸ Working Group 3 concluded that crawls containing emergency information should be made accessible to persons who are

¹⁵ VPAAC Working Group 1 focused on Internet protocol (“IP”) closed captioning. *See* First Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010, available at <http://vpaac.wikispaces.com>. VPPAC Working Group 4 focused on accessibility of user interfaces, video programming guides, and menus. *See* Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming Guides and Menus, available at <http://vpaac.wikispaces.com>.

¹⁶ The CVAA was enacted on October 8, 2010. Section 201(e)(2) of the CVAA required the VPAAC’s report to include:

- (A) A recommended schedule of deadlines for the provision of video description and emergency information.
- (B) An identification of the performance objectives for protocols, technical capabilities, and technical procedures needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol or digital broadcast television.
- (C) An identification of additional protocols, technical capabilities, and technical procedures beyond those available as of the date of enactment of the Twenty-First Century Communications and Video Accessibility Act of 2010 for the delivery of video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol or digital broadcast television that are necessary to meet the performance objectives identified under subparagraph (B).
- (D) A recommendation for technical standards to address the performance objectives identified in subparagraph (B).
- (E) A recommendation for any regulations that may be necessary to ensure compatibility between video programming, except for consumer generated media, delivered using Internet protocol or digital broadcast television and devices capable of receiving and displaying such programming, except for consumer generated media, in order to facilitate access to video descriptions and emergency information.

Pub. L. No. 111-260, § 201(e)(2). Section 201(e)(2) also required the report to include information related to user interfaces and video programming guides and menus, which will be part of a separate Commission rulemaking proceeding.

¹⁷ Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010, available at <http://vpaac.wikispaces.com> (“VPAAC Second Report”). The portion of the report that addresses video description is available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Video+Description+REPORT+AS+SUBMITTED+4-9-2012.pdf> (“VPAAC Second Report: Video Description”). The portion of the report that addresses access to emergency information is available at <http://vpaac.wikispaces.com/file/view/120409+VPAAC+Access+to+Emergency+Information+REPORT+AS+SUBMITTED+4-9-2012.pdf> (“VPAAC Second Report: Access to Emergency Information”).

¹⁸ VPAAC Second Report: Access to Emergency Information at 7-12.

blind or visually impaired by transmitting an audio representation of the emergency information on a secondary audio stream, as the Commission now proposes.¹⁹ Working Group 3 also suggested issues that should be analyzed further, and it described variables that may affect implementation deadlines.²⁰ In a separate section of the same report, Working Group 2 presented information on technical capabilities, protocols, and procedures by which video description reaches the consumer, as well as developments for the delivery of video description.²¹ Working Group 2 then set forth its findings and recommendations pertaining to the creation and delivery of video description.²² The Media Bureau and the Consumer and Governmental Affairs Bureau sought comment on the portions of the VPAAC Second Report that address emergency information and video description.²³

4. The Commission previously addressed the issue of making televised emergency information accessible to those who are blind or visually impaired in 2000.²⁴ The Commission adopted a rule that required broadcast stations and multichannel video programming distributors (“MVPDs”) “that provide[] local emergency information to make the critical details of that information accessible to persons with visual disabilities” in certain situations.²⁵ Specifically, pursuant to Section 79.2 of the Commission’s rules, the emergency information requirements for accessibility to persons with visual disabilities vary based on whether the information is provided in the video portion of a newscast. First, if emergency information is provided in the video portion of a regularly scheduled newscast, or in the video portion of a newscast that interrupts regular programming, it must be made accessible to people who are blind or visually impaired.²⁶ This requires the aural presentation of emergency information that is being provided to viewers visually to be included as part of the primary program audio stream.²⁷ Second, if emergency information is provided solely visually during programming that is not a newscast (such as through an on-screen crawl), it must be accompanied by an aural tone.²⁸ It is the second situation that is

¹⁹ *Id.* at 10.

²⁰ *Id.* at 12-14.

²¹ VPAAC Second Report: Video Description at 8-22.

²² *Id.* at 22-31. In presenting its findings and recommendations, the VPAAC discussed the consumer position separately from the industry position where there was not a consensus. Additionally, we note that the VPAAC presented certain recommendations regarding the provision of information about programming that is video described, including proposals that entities be required to provide information about video described programming on their websites and to programming information distributors. *Id.* at 23-25. These issues are beyond the scope of this proceeding, and accordingly we will not consider them here.

²³ Public Notice, *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: Video Description and Access to Emergency Information*, 27 FCC Rcd 4195 (2012). The Commission received three comments and three reply comments, which helped inform this *NPRM*.

²⁴ *Implementation of Video Description of Video Programming*, Report and Order, 15 FCC Rcd 15230, 15250, ¶ 49 (2000) (“2000 Video Description Order”).

²⁵ *Id.*

²⁶ 47 C.F.R. § 79.2(b)(1)(ii). Section 79.2 contains a separate requirement that video programming distributors must make emergency information that is provided in the audio portion of the programming accessible to persons with hearing disabilities by using closed captioning or a method of visual presentation. 47 C.F.R. § 79.2(b)(1)(i). That requirement is not at issue in this proceeding. Instead, this proceeding involves the portions of Section 79.2(b) concerning accessibility to persons with visual disabilities. 47 C.F.R. § 79.2(b)(1)(ii)-(iii).

²⁷ *2000 Video Description Order*, 15 FCC Rcd at 15250-51, ¶¶ 49-50.

²⁸ 47 C.F.R. § 79.2(b)(1)(iii) (“Emergency information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone.”).

the focus of the instant proceeding. Industry has coalesced around the use of three high-pitched tones to indicate the presence of on-screen emergency information, although the Commission's rules do not specify that three tones must be used.²⁹ In this situation, when an individual who is blind or visually impaired hears the three tones, he or she must take some other action, such as turning on a radio, to determine the nature and severity of the situation.³⁰ As a result, individuals who are blind or visually impaired may have inadequate or untimely access to emergency information.³¹ This proceeding seeks to remedy this situation by ensuring that the critical details of emergency information provided visually during programming other than a newscast will be fully accessible to those members of the program's audience who are blind or visually impaired.

5. In addition to emergency information, we also consider access to video description in this proceeding. Video description services make video programming accessible to individuals who are blind or visually impaired. Video description is the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.³² Last year, as directed by the CVAA, the Commission reinstated, with certain modifications,³³ video description rules previously vacated by the United States Court of Appeals for the District of Columbia Circuit.³⁴ The rules require full-power affiliates of the top four national networks located in the top 25 television markets to provide 50 hours per calendar quarter of video-described prime time and/or children's programming.³⁵ The rules also require MVPDs that operate systems with 50,000 or more subscribers to provide 50 hours per calendar quarter of video-described prime time and/or children's programming on each of the top five non-broadcast networks that they carry on those systems.³⁶ Broadcast television stations and MVPDs must additionally "pass through" video description if they have the technical capability to do so.³⁷ Broadcasters and MVPDs were required to be in full compliance with these requirements beginning on July 1, 2012.³⁸ Video descriptions for digital television are provided as a secondary audio service, and typically a viewer can access video description through an onscreen menu provided by the viewer's home television receiver or set-top box.³⁹

²⁹ VPAAC Second Report: Access to Emergency Information at 3.

³⁰ *2000 Video Description Order*, 15 FCC Rcd at 15250, ¶ 48; VPAAC Second Report: Access to Emergency Information at 3-4.

³¹ VPAAC Second Report: Access to Emergency Information at 7.

³² 47 C.F.R. § 79.3(a)(3).

³³ 47 U.S.C. § 613(f)(1)-(2); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847 (2011) ("*2011 Video Description Order*").

³⁴ In 1996, the Commission, in compliance with a congressional mandate, issued a report on the use of video description in video programming. 47 U.S.C. § 613. See also *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, Report, 11 FCC Rcd 19214 (1996). In 2000, the Commission adopted rules requiring certain broadcasters and MVPDs to carry programming with video description. *2000 Video Description Order*. The D.C. Circuit vacated the rules five months after they went into effect, on the ground that the Commission lacked authority to promulgate video description rules. *Motion Picture Ass'n of Am., Inc. v. FCC*, 309 F.3d 796 (D.C. Cir. 2002).

³⁵ *2011 Video Description Order*, 26 FCC Rcd at 11849, ¶ 4. Beginning July 1, 2015, full-power affiliates of the top four national networks located in markets 26-60 will also be subject to this requirement. *Id.* at 11856, ¶ 16.

³⁶ *Id.* at 11849-50, ¶ 4.

³⁷ *Id.* at 11850, ¶ 4.

³⁸ *Id.* at 11864, ¶ 34.

³⁹ VPAAC Second Report: Video Description at 6.

III. DISCUSSION

6. At the outset, we do not, at this time, extend the scope of the emergency information and video description rules in this proceeding beyond the category of programming already covered by our existing emergency information and video description rules.⁴⁰ In other words, for purposes of this proceeding, the emergency information and video description rules will continue to apply to television broadcast services and MVPD services, but not to IP-delivered video programming that is not otherwise an MVPD service. Notably, Congress did not explicitly extend the scope of the emergency information rules to IP-delivered video programming, as it did in requiring closed captioning of IP-delivered video programming.⁴¹ Instead, Congress referenced television-based definitions of video programming distributors and providers.⁴² In addition, as a practical matter, we note that the VPAAC found that “at this time . . . there does not appear to be any uniform or consistent methodology for delivering emergency information via the Internet.”⁴³ Similarly, we note that the CVAA directs that the Commission’s video description regulations “shall apply to video programming . . . insofar as such programming is transmitted for display on television in digital format.”⁴⁴ Accordingly, the video description rules require video description only by television broadcast stations and MVPDs.⁴⁵ Consistent with this view and as explained more fully below, we propose to limit the scope of the apparatus rules that the Commission will adopt in this proceeding to apparatus that make available the type of programming that is subject to our existing emergency information rules, as set forth in Section 79.2, and our existing video description rules, as set forth in Section 79.3, *i.e.*, apparatus designed to receive, play back, or record broadcast or MVPD service.⁴⁶ We seek comment on this analysis.

A. Accessible Emergency Information

7. The CVAA requires us to “promulgate regulations that require video programming providers and video programming distributors [as defined in Section 79.1 of our rules] and program owners to convey such emergency information in a manner accessible to individuals who are blind or

⁴⁰ 47 C.F.R. §§ 79.2(a)-(b), 79.3(a)-(c). We note that Congress directed the Commission to conduct inquiries on further video description requirements in the future. 47 U.S.C. § 613(f)(3).

⁴¹ See 47 U.S.C. § 613(c). We note, however, that Congress charged the VPAAC to report and make recommendations to the Commission with respect to the delivery of accessible emergency information and video description using IP. Pub. L. No. 111-260, §§ 201(e)(2)(B), (C), and (E) (charging the VPAAC to identify “the performance objectives . . . needed to permit content providers, content distributors, Internet service providers, software developers, and device manufacturers to reliably encode, transport, receive, and render video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol or digital broadcast television”; to identify “additional protocols . . . for the delivery of video descriptions of video programming, except for consumer generated media, and emergency information delivered using Internet protocol or digital broadcast television . . .”; and to recommend “any regulations that may be necessary to ensure compatibility between video programming, except for consumer generated media, delivered using Internet protocol or digital broadcast television and devices capable of receiving and displaying such programming, except for consumer generated media, in order to facilitate access to video descriptions and emergency information”).

⁴² 47 U.S.C. § 613(g)(2) (referencing the definitions of video programming providers and video programming distributors from the television closed captioning rule, 47 C.F.R. § 79.1); 47 C.F.R. § 79.1(a)(2)-(3) (defining a television video programming provider and distributor).

⁴³ VPAAC Second Report: Access to Emergency Information at 9.

⁴⁴ 47 U.S.C. § 613(f)(2)(A).

⁴⁵ 2011 Video Description Order, 26 FCC Rcd at 11848, ¶ 2; 47 C.F.R. § 79.3(b).

⁴⁶ *Infra* Section III.B.2.

visually impaired.”⁴⁷ Based upon the VPAAC Second Report and the record assembled in this proceeding regarding the relative advantages and disadvantages of several possible methods, discussed below, we propose to require covered entities to make emergency information that is provided visually during programming that is not a newscast (such as that provided via crawls) accessible to individuals who are blind or visually impaired by using a secondary audio stream to provide that emergency information aurally and concurrently with the emergency information being conveyed visually.

8. As noted above, our emergency information rules currently require video programming distributors to do two things to make emergency information accessible to individuals who are blind or visually impaired.⁴⁸ First, for emergency information that is provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming, they must make the emergency information accessible to persons with visual disabilities.⁴⁹ This accessibility is achieved through the aural presentation in the main program audio of emergency information that is being provided to viewers visually.⁵⁰ No commenters indicated a need to revise the existing rules for this situation. We, therefore, do not propose any substantive changes to this requirement and expect covered entities to comply with the existing rule.

9. Second, for emergency information that is provided in the video portion of programming that is not a regularly scheduled newscast or a newscast that interrupts regular programming, under our current rules video programming distributors must accompany the emergency information with an aural tone.⁵¹ We seek comment on our proposal to modify this requirement as the VPAAC advocates by requiring video programming distributors to make emergency information available on a secondary audio stream, if that information is provided visually in programming that is not a newscast.⁵² Under this approach, consumers would be alerted to the presence of such emergency information through the already-required aural tone that accompanies this emergency information,⁵³ and the emergency information would be accessible to consumers who are blind or visually impaired who switch to a

⁴⁷ 47 U.S.C. § 613(g)(2).

⁴⁸ See ¶ 4, *supra*. We note that, in addition to the provisions addressing accessibility to individuals who are blind or visually impaired, our emergency information rules also contain a provision addressing accessibility to individuals with hearing disabilities. 47 C.F.R. § 79.2(b)(1)(i) (requiring that “[e]mergency information that is provided in the audio portion of the programming must be made accessible to persons with hearing disabilities by using a method of closed captioning or by using a method of visual presentation, as described in § 79.1 of this part”). The emergency information provisions of Section 202 of the CVAA are focused on individuals who are blind or visually impaired, and not on individuals who are deaf or hearing impaired. 47 U.S.C. § 613(g) (requiring the Commission to adopt rules relating to conveying emergency information “in a manner accessible to individuals *who are blind or visually impaired*”) (emphasis added). Accordingly, accessibility of emergency information to individuals who are deaf or hard of hearing is not at issue in this proceeding.

⁴⁹ 47 C.F.R. § 79.2(b)(1)(ii); *2000 Video Description Order*, 15 FCC Rcd at 15250-51, ¶ 49-50.

⁵⁰ *2000 Video Description Order*, 15 FCC Rcd at 15250-51, ¶¶ 49-50.

⁵¹ 47 C.F.R. § 79.2(b)(1)(iii).

⁵² VPAAC Second Report: Access to Emergency Information at 10. We also propose a non-substantive edit to our existing emergency information rules. Specifically, we propose to change references to “[e]mergency information that is provided in the video portion” in the current rules to “[e]mergency information that is provided visually.” We welcome comment on this proposal.

⁵³ 47 C.F.R. § 79.2(b)(1)(iii).

secondary audio stream.⁵⁴ The VPAAC, which includes representatives of the industry and consumer groups, supports the use of a secondary audio stream for this purpose.⁵⁵ According to the VPAAC, MVPDs, including cable operators, direct broadcast satellite (“DBS”) providers, and Internet protocol television providers (“IPTV providers”),⁵⁶ are technically capable of providing access to emergency information through the secondary audio streams.⁵⁷ The National Association of Broadcasters (“NAB”) also supports the approach of using the secondary audio stream to provide emergency information that is conveyed in an onscreen crawl in a manner that is audibly accessible.⁵⁸

10. We seek comment on the benefits of providing accessible emergency information on a secondary audio stream and the incremental costs of providing a secondary audio stream for this purpose. Are there any broadcasters or MVPDs that do not currently provide a secondary audio stream, and if so, should the new rules apply any differently to them? We explained in the *2011 Video Description Order* that certain stations and MVPDs may lack the technical capability to pass through video description, and therefore the Commission reinstated a technical capability exception.⁵⁹ Are there technical capability issues that should be taken into account in the context of requiring emergency information to be provided on a secondary audio stream? If lack of technical capability is an issue, how should the Commission consider it in revising its emergency information rules as proposed herein? If a video programming distributor does not currently make available a secondary audio stream, but it has the technical capability to do so, should the Commission require it to make available a secondary audio stream that could be used to provide emergency information? Or are there alternative ways for video programming distributors that do not have a secondary audio stream to provide such information? What impact, if any, would the proposals contained in this *NPRM* have on broadcasters’ ability to channel share? What additional bandwidth, if any, would MVPDs need to transmit multiple audio streams, and how would this affect their networks if they carry multiple audio streams for all channels? Are any broadcasters or MVPDs providing more than two audio streams? If there are more than two audio streams available, what is provided or should be provided on those audio streams and how will consumers know which one to tune to for emergency information? Should aurally accessible emergency information always be provided on the audio stream containing video description, rather than on a stream dedicated to aurally accessible emergency information or containing other program-related material, such as a Spanish or other language audio stream? We seek comment on whether and how the proposals contained herein should apply to EAS alerts. For example, to what extent is emergency information provided as visual-only EAS alerts?⁶⁰

11. We invite input on the implementation of our proposal to require covered entities to make emergency information that is provided visually during programming that is not a newscast (such as that provided via crawls) accessible to individuals who are blind or visually impaired by using a secondary audio stream to provide that emergency information aurally and concurrently with the emergency

⁵⁴ VPAAC Second Report: Access to Emergency Information at 10. The VPAAC Second Report refers to making emergency information in a crawl or scroll accessible as providing an “audio representation” or an “aural representation” of the visually conveyed emergency information. *See, e.g., id.* at 8-11 and 13.

⁵⁵ *See id.* at 10-11.

⁵⁶ IPTV providers include the AT&T U-Verse service and other wireline providers that deliver multiple channels of video using Internet protocol. From a consumer’s perspective, IPTV service is similar to other pay television services. *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Fourteenth Report, 27 FCC Rcd 8610, 8623, ¶ 34 (2012).

⁵⁷ VPAAC Second Report: Access to Emergency Information at 5-6.

⁵⁸ Comments of the National Association of Broadcasters at 7-8 (“NAB Comments”).

⁵⁹ *2011 Video Description Order*, 26 FCC Rcd at 11861, ¶¶ 25-27.

⁶⁰ *See* 47 C.F.R. § 11.51.

information being conveyed visually. What time frame is appropriate for requiring covered entities to convey emergency information in a secondary audio stream?⁶¹ What steps must covered entities take to meet this requirement? Should we require covered entities to provide customer support services to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams to access accessible emergency information?⁶² We seek comment on whether the Commission should update its definition of “emergency information.”⁶³ For example, to what extent are severe thunderstorms currently considered to be “emergencies” subject to our rule? To the extent they are currently covered, should they be added to the list of examples in the rule? Are there other examples of emergencies that should explicitly be included in our definition of “emergency information”? What impact would revising our definition of emergency information have on the availability of video description, given that, under our proposal above, both services will be provided using a secondary audio stream?

12. Assuming the Commission requires that visual emergency information be made accessible by means of a secondary audio stream, to what extent should the Commission permit the use of text-to-speech (“TTS”) technologies? TTS is a technology that generates an audio version of a textual message.⁶⁴ The VPAAC found TTS to be essential for conveying emergency information because of the speed with which it can generate the necessary audio.⁶⁵ In a proceeding regarding EAS earlier this year, the Commission initially noted “concerns in the record about whether text-to-speech software is sufficiently accurate and reliable to deliver consistently accurate and timely alerts to the public,” and deferred consideration of that issue to a later proceeding.⁶⁶ However, upon reconsideration, the Commission subsequently determined that it would permit, but not require, regulated entities to use TTS to render EAS audio from the text of EAS alerts formatted in the Common Alerting Protocol until the merits of mandating TTS use for EAS purposes have been more fully developed in the record.⁶⁷ We seek

⁶¹ The VPAAC did not reach agreement as to recommended deadlines. *See* VPAAC Second Report: Access to Emergency Information at 13. *See also* Reply Comments of the American Council of the Blind at 5 (“ACB Reply”) (requesting that setting a deadline for the provision of audio emergency information be the Commission’s first priority in this proceeding, given its importance for safety purposes); Reply Comments of Marlaina Lieberg at 4 (“Lieberg Reply”) (same); Reply Comments of the Missouri Council of the Blind at 3 (“MCB Reply”) (same).

⁶² *See* 47 C.F.R. § 79.1(i) (requiring video programming distributors to make contact information available for the receipt and handling of immediate and non-immediate closed captioning concerns).

⁶³ 47 C.F.R. § 79.2(a)(2).

⁶⁴ *See, e.g., 2012 EAS Order*, 27 FCC Rcd at 658, n. 118; *Review of the Emergency Alert System*, Order on Reconsideration, 27 FCC Rcd 4429 (2012) (“*2012 EAS Order on Reconsideration*”).

⁶⁵ VPAAC Second Report: Access to Emergency Information at 9. *See also* NAB Comments at 8; ACB Reply at 6. We also note that, if textual data is also transmitted as a separate file within the broadcast stream, it can also be made available for other assistive technologies and language translation systems that have the potential to enhance access to emergency information both for consumers with and without visual impairments. For example, in addition to providing audio, apparatus could display the textual information in large print for viewers who are deaf and have a visual impairment. Further, by permitting the text to be converted to speech in the apparatus, it could be possible for an apparatus to translate emergency information to a language other than English, or to provide emergency information when the viewer is using that apparatus for something other than watching covered video programming. We seek comment on these possibilities.

⁶⁶ *2012 EAS Order*, 27 FCC Rcd at 658, ¶ 38 and n. 122 (finding that, while “use of text-to-speech technology has some support in the record, there are also concerns in the record about whether text-to-speech software is sufficiently accurate and reliable to deliver consistently accurate and timely alerts to the public,” and stating that “the use of text-to-speech software may be discussed further in proceedings to implement the [CVAA], which requires televised emergency information to be accessible to individuals who are blind or visually impaired”) (footnotes omitted).

⁶⁷ *2012 EAS Order on Reconsideration*, 27 FCC Rcd at 4432, ¶¶ 7-8.

comment on the accuracy and reliability of current TTS technology and, more specifically, whether it is sufficiently accurate and reliable for rendering an aural translation of emergency information text on a secondary audio stream, as proposed above. What would be the costs and benefits of using TTS for this purpose? We also seek comment on other concerns related to this issue, including the need to timely provide emergency information. To the extent commenters consider TTS too unreliable for this purpose, we seek comment on how TTS can be made more reliable, as well as effective and timely alternatives to TTS and their costs and benefits.

13. Should we require emergency information presented aurally to be identical to that presented textually, or should differences be permissible as long as the information presented aurally is comprehensive and satisfies the requirements of Section 79.2(a)(2)?⁶⁸ We note that emergency information is defined as “[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency.”⁶⁹ The rule’s accompanying note requires the inclusion of “*specific* details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.”⁷⁰ Must the information provided aurally be verbatim to the text provided to comply with this directive? Should the emergency information provided aurally be abbreviated where the information presented textually is particularly lengthy, for example, where it lists many school district closings in the viewing area? Given the potential use of the secondary audio stream for both emergency information and video description, how can we ensure that video description is not unduly interrupted? Should we require covered entities to repeat the aural version of emergency information on the secondary audio stream or take some other action to ensure that consumers have sufficient time to tune in after hearing the required aural tones? Is visual but non-textual emergency information – such as a map showing the path of a storm – sometimes provided during programming that is not a newscast? Are such visual displays (*e.g.*, maps) always accompanied by a crawl or scroll containing a textual version of the emergency information conveyed by that visual display? What requirements should apply to the aural description of visual but non-textual emergency information?

14. The Commission’s rules currently prohibit emergency information from blocking video description, and they prohibit video description from blocking emergency information provided by means other than video description.⁷¹ The VPAAC recommends eliminating the portion of this rule that prohibits emergency information from blocking video description, given their recommendation that “emergency information conveyed visually by crawl or scroll also be conveyed aurally utilizing the same audio stream as the video description audio stream.”⁷² The VPAAC recommends that Section 79.2(b)(3)(ii) be amended to read as follows: “Any video description provided should not block any emergency information provided by video description or by means other than video description.”⁷³ We propose that this be simplified to read as follows: “Any video description provided should not block any emergency information.” We seek comment on this proposal. Should this proposal be expanded to

⁶⁸ See VPAAC Second Report: Access to Emergency Information at 10 (“The aural information does not need to be identical to the visual information that appears as a crawl or scroll across the TV screen, but should provide understandable and comprehensive audible content corresponding to the crawl or scroll.”); 47 C.F.R. § 79.2(a)(2).

⁶⁹ 47 C.F.R. § 79.2(a)(2).

⁷⁰ See note accompanying 47 C.F.R. § 79.2(a)(2) (emphasis added).

⁷¹ 47 C.F.R. § 79.2(b)(3)(ii).

⁷² See VPAAC Second Report: Access to Emergency Information at 10-11.

⁷³ *Id.*

require such aural emergency information to supersede any content that may be present on the secondary audio stream (e.g., video description, Spanish or other languages, a duplicate of the main audio, or silence)?

15. Do the proposed revisions to the emergency information requirements necessitate any revisions to FCC Form 2000C, the disability access complaint form, or the existing complaint procedures contained in Section 79.2(c) of our rules? If so, what revisions are needed?

16. We also seek comment on the roles of the various entities listed in Section 202. That provision mandates that we “require video programming providers and video programming distributors (as those terms are defined in section 79.1 of title 47, Code of Federal Regulations) and program owners to convey such emergency information in a manner accessible to individuals who are blind or visually impaired.”⁷⁴ Section 79.1 of our rules defines a “video programming distributor” as “[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.”⁷⁵ That section defines a “video programming provider” as “[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.”⁷⁶ Section 79.2 of the Commission’s rules currently imposes emergency information accessibility requirements on video programming distributors only, but Section 202(a) of the CVAA requires us to promulgate regulations containing requirements for video programming providers and program owners as well as video programming distributors.⁷⁷ What role should video programming distributors, video programming providers, and program owners play in ensuring that emergency information is conveyed in an accessible manner? Should video programming distributors hold the primary responsibility, with video programming providers and program owners being prohibited from interfering with or hindering a video programming distributor’s provision of accessible emergency information? Or, are there certain responsibilities that should be allocated to each of the covered entities? What entity is generally responsible for preparing a crawl or scroll containing emergency information, and how does that responsibility affect the obligation to provide an aural version of the information?

17. As noted, Section 79.1 of the Commission’s rules includes definitions for the terms “video programming provider” and “video programming distributor,” but it does not define “program owner.”⁷⁸ The definition of “video programming provider” does, however, include a “broadcast or nonbroadcast television network *and the owners of such programming.*”⁷⁹ We seek comment on whether it is necessary to separately define a video programming owner in the present context. In the context of closed captioning of IP-delivered video programming, the Commission defined a video programming owner as “any person or entity that either (i) licenses the video programming to a video programming

⁷⁴ 47 U.S.C. § 613(g)(2).

⁷⁵ 47 C.F.R. § 79.1(a)(2).

⁷⁶ 47 C.F.R. § 79.1(a)(3).

⁷⁷ 47 U.S.C. § 613(g)(2); *see also* Senate Committee Report at 13 (“[I]t is the intention of the Committee that the Commission have flexibility with respect to applying the requirements of new section 713(g) to the video programming providers, distributors, and owners that convey the type of video programming that will contain emergency information.”); House Committee Report at 29 (same). The VPAAC did not address the appropriate allocation of responsibilities among video programming providers, video programming distributors, and program owners with regard to the provision of emergency information.

⁷⁸ *See* 47 C.F.R. § 79.1(a)(2)-(3).

⁷⁹ 47 C.F.R. § 79.1(a)(3) (emphasis added).

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.”⁸⁰ Although the references in this definition to “a distribution method that uses Internet protocol” are specific to the IP closed captioning proceeding, and thus would not be applicable here, the definition may be useful as a starting point for purposes of defining “program owner” in this context. For example, for purposes of this proceeding, we seek comment on whether we should define a video programming owner as any person or entity that either (i) licenses the video programming to a video programming distributor or provider, as those terms are defined in Section 79.1 of the Commission’s rules; 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, as those terms are defined in Section 79.1 of the Commission’s rules.

18. The VPAAC identified additional or alternative methods to convey emergency information in a manner accessible to individuals who are blind or visually impaired, other than the use of a secondary audio stream.⁸¹ For example, the VPAAC considered alternatives such as: (1) including a shortened audio version of the textual emergency information on the primary stream; or (2) broadcasting a 5 to 10 second audio message after the three high-pitched tones announcing the start of a textual message, to inform individuals who are blind or visually impaired of a means by which they could access the emergency information, such as a telephone number or radio station.⁸² According to the VPAAC, these alternatives could be used in concert with each other, but they would have disadvantages, including interruption to the main program audio and the need for sufficient resources to create and manage the brief audio messages.⁸³ Should we require (on an interim basis) or permit covered entities to use one or more of these alternative approaches in concert with the use of the secondary audio stream that we propose above? The VPAAC also considered and rejected other alternatives that it determined either did not meet the requirements of the CVAA, relied upon technology or services that are not widely available, or involved additional problems.⁸⁴ We invite comment on whether the alternatives rejected by VPAAC merit further consideration. We ask commenters to identify any other alternative methods by which video programming providers and distributors and program owners can make emergency information accessible to individuals who are blind or visually impaired. Are any such alternatives preferable to our proposal, which requires the use of a secondary audio stream? How would the costs and benefits of any alternate proposals compare to the costs and benefits of the proposed use of the secondary audio stream discussed herein?

⁸⁰ *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787, 792, ¶ 7 (2012) (“*IP Closed Captioning Order*”).

⁸¹ The CVAA requires us to “identify methods to convey emergency information . . . in a manner accessible to individuals who are blind or visually impaired.” 47 U.S.C. § 613(g)(1).

⁸² VPAAC Second Report: Access to Emergency Information at 8.

⁸³ *Id.*

⁸⁴ *Id.* at 11-12 (rejecting the following alternatives: (1) “dipping” or lowering the main program audio and playing an aural message over the lowered audio; (2) providing screen reader software or devices on request; (3) enabling users to select and enlarge emergency crawl text; (4) providing guidance for consumers, such as how to switch to a secondary audio channel, which is insufficient as a standalone solution; and (5) using an Internet-based standardized application to filter emergency information by location).

B. Apparatus Requirements for Emergency Information and Video Description

19. Pursuant to Section 203 of the CVAA, the Commission must require certain apparatus to have the capability to decode and make available required video description services and emergency information in a manner accessible to individuals who are blind or visually impaired.⁸⁵ The Commission must prescribe these requirements by October 9, 2013.⁸⁶ The regulations promulgated as part of the current proceeding must include “any technical standards, protocols, and procedures needed for the transmission of” video description and emergency information.⁸⁷ Below we seek comment on requirements for apparatus with regard to video description and emergency information. Our Section 203 discussion focuses on the availability of secondary audio streams, because that is both the current mechanism for providing video description and our proposed mechanism for making emergency information accessible.

1. Requirements for Apparatus Subject to Section 203 of the CVAA

20. Pursuant to Section 203 of the CVAA, “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 “have the capability to decode and make available the transmission and delivery of” required video description services.⁸⁸ Such apparatus must also “have the capability to decode and make available emergency information . . . in a manner that is accessible to individuals who are blind or visually impaired.”⁸⁹ We seek comment on the meaning of these requirements. What specific capabilities should the Commission mandate? What steps must manufacturers of covered apparatus take to ensure that video description services and emergency information provided via a secondary audio stream are available and accessible? How should we balance the costs of compliance for apparatus subject to Section 203 of the CVAA and the benefits to consumers? With respect to MVPD-provided apparatus, should we impose different requirements on equipment provided by different types of MVPDs? For example, the House Committee Report indicated that DBS providers may face unique technical challenges pertaining to compliance with Section 203 of the CVAA.⁹⁰ We seek comment on whether apparatus should have the capability to make textual emergency information audible through the use of text-to-speech, consistent with our discussion above in paragraph 12 or whether there are any other specific capabilities that apparatus would need to include to comply with these requirements beyond the ability to select and decode a secondary audio

⁸⁵ 47 U.S.C. §§ 303(u), (z), 330(b).

⁸⁶ Pub. L. No. 111-260, § 203(d). *See also supra* n. 12.

⁸⁷ Pub. L. No. 111-260, § 203(d).

⁸⁸ 47 U.S.C. § 303(u)(1)(B).

⁸⁹ 47 U.S.C. § 303(u)(1)(C).

⁹⁰ House Committee Report at 31 (“[T]he Committee understands that [DBS] providers may have different technical limitations, such as capacity constraints on spot beams used to deliver local signals, than other [MVPDs]. The Committee intends that the Commission consider these limitations when promulgating regulations and, if necessary, provide some flexibility where technical constraints exist. For instance, it may be acceptable for DBS providers to comply with the requirements of rules promulgated under this section by passing through or rendering video description on a high-definition spot beam, so long as any equipment needed to view this programming is provided to subscribers upon request and free of charge and that the requesting subscriber can receive the channels in high-definition format at no additional charge.”). *See also infra* Section III.B.4 (Alternate Means of Compliance). We understand that DBS providers may use spot beams to provide local television stations to a particular geographic area, while using another delivery method for national distribution. Differing capacity constraints on these two means of delivery may require consumers to use a different type of apparatus to receive the spot beam than to receive nationally distributed signals.

stream. If so, should we require broadcasters and MVPDs to make the textual emergency information available to apparatus?

21. We also seek comment on the requirements for recording devices, namely, that “apparatus designed to record video programming transmitted simultaneously with sound . . . enable the rendering or the pass through of . . . video description signals, and emergency information . . . such that viewers are able to activate and de-activate the . . . video description as the video programming is played back on a picture screen of any size.”⁹¹ What should we require of recording devices to “enable the rendering or the pass through of” video description and emergency information? We seek comment on the benefits and incremental costs to ensuring that video description and accessible emergency information, when provided as proposed on the secondary audio stream, are recorded and can be activated or de-activated when played back. How do requirements relating to emergency information apply to recording devices, given that emergency information is, by its nature, extremely time sensitive? How should we expect recording devices to ensure that the secondary audio stream is stored along with the associated video, such that a consumer may switch between the main program audio and the secondary audio stream when viewing recorded programming?

22. The Commission’s rules must “provide performance and display standards for . . . the transmission and delivery of video description services, and the conveyance of emergency information as required”⁹² We seek comment on what performance and display standards we should impose for the transmission and delivery of video description and emergency information.⁹³ We also seek comment on the VPAAC’s suggestion that, when video description, alternate language audio, and emergency information are not available on a secondary audio channel, best efforts should be taken to ensure that the channel contains the main program audio rather than silence.⁹⁴ Such an approach would enable consumers to tune to their secondary audio stream all of the time, instead of needing to switch back and forth depending on whether video description is available for a particular program or emergency information is being provided. Should we impose this as a requirement, or recommend it as a best practice?

23. Section 203 of the CVAA directs the Commission to require that “interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions and to make encoded video description and emergency information audible.”⁹⁵ It is our understanding that most, if not all, devices already use interconnection mechanisms that make available audio provided via a secondary audio stream. Thus, we do not believe that any further steps are necessary to implement this requirement. We seek comment on our understanding.

24. We seek comment on three issues that arose in the 2011 video description proceeding that may be relevant here. They pertain to equipment features that present challenges for video programming distributors and consumers. First, the *2011 Video Description Order* observed that “viewers with digital sets may be unable to find and activate an audio stream that has been properly labeled ‘VI’ (‘Visually Impaired’) pursuant to the ATSC standard,” so the audio stream used for video description must be

⁹¹ 47 U.S.C. § 303(z)(1).

⁹² 47 U.S.C. § 330(b).

⁹³ See VPAAC Second Report: Video Description at 9-20 (discussing the processes involved in the production and distribution of video description).

⁹⁴ *Id.* at 26-27.

⁹⁵ 47 U.S.C. § 303(z)(2).

labeled as “CM” (“complete main”) for the system to work properly.⁹⁶ Further, some television receivers do not handle two audio tracks identified as English properly, and thus to ensure compatibility, broadcasters often tag the video description stream as a foreign language. That is, rather than conveying metadata that indicates the audio stream is an English track for the visually impaired (VI-English), broadcasters convey metadata that the service is a “complete main” audio stream in a foreign language (typically CM-Spanish or CM-Portuguese) in order to provide a tag for the stream. In 2011, the Commission decided that this issue would be better addressed in a later proceeding.⁹⁷ The VPAAC recognizes that there is a “need for a more user-friendly mechanism to allow the carriage of multiple audio services,” but it does not identify a timeframe for such a mechanism.⁹⁸ We seek comment on whether the Commission should impose a requirement at this time that broadcast receivers detect and decode tracks marked for the “visually impaired.” How would consumers who have not upgraded their equipment be affected by such a requirement? How can we minimize any confusion or cost to such consumers? How can we mitigate the need for consumers to purchase new equipment to take advantage of the requirements proposed herein?⁹⁹ Do the issues discussed in this paragraph pertain to MVPDs as well as broadcasters?

25. Second, Dolby Laboratories, Inc. commented that the audio experience for individuals accessing video-described programming could be enhanced if devices supported a “receiver-mix” technology that would enable the device to combine the full surround sound main audio with video description.¹⁰⁰ Although it is technically possible for broadcasters and some MVPDs to provide two full surround channels, the additional bandwidth required to do so could pose a hardship for those entities.¹⁰¹ In the *2011 Video Description Order*, the Commission determined that this issue would also be better addressed in a later proceeding. We invite comment on whether any action should be taken on this issue at this time.

26. Third, although the ATSC standard for digital television broadcasting enables the use of multiple audio streams (including, for example, the concurrent use of a main audio stream, a secondary video description stream, and a third stream containing Spanish or other foreign language audio), it is our understanding that few, if any, broadcasters or MVPDs provide more than two audio streams, and few devices are able to accommodate more than two audio streams. The *2011 Video Description Order* noted that equipment limitations may prohibit some viewers from being able to access a third audio channel even if one were to be provided by a video programming distributor.¹⁰² Although we do not propose to require video programming distributors to carry more than one additional audio channel at this time, we are concerned that equipment limitations may be discouraging video programming distributors from doing so voluntarily. We seek comment on the suggestion of consumer members of the VPAAC that we “consider how best to facilitate a transition . . . to deliver multiple simultaneous ancillary audio services,

⁹⁶ *2011 Video Description Order*, 26 FCC Rcd at 11863, ¶ 30.

⁹⁷ *Id.* at 11863, ¶ 31 and n. 133.

⁹⁸ VPAAC Second Report: Video Description at 25.

⁹⁹ See NAB Comments at 3 (explaining that certain potential new requirements “would yield the unfortunate result of disenfranchising existing users of video description and would likely cause significant consumer disruption Current television receivers in the marketplace would likely be unable to interpret new content signaling parameters. As a result, consumers would be unable to locate video descriptions using current equipment and would need to purchase a new TV receiver to take advantage of features that might be enabled by such signaling.”).

¹⁰⁰ See *2011 Video Description Order*, 26 FCC Rcd at 11872, n. 208; Comments of Dolby Laboratories, Inc., MB Docket No. 11-43, at 3 (filed Apr. 28, 2011).

¹⁰¹ See *2011 Video Description Order*, 26 FCC Rcd at 11862, ¶ 29.

¹⁰² See *id.* at 11864, ¶ 32.

so that both Spanish (or other alternate languages) and video description could be provided for the same program.”¹⁰³ Although industry members of the VPAAC concluded that we do not need a single format, protocol, or standard for multiple audio services,¹⁰⁴ we note the existence of what is known as “CEA-CEB21,” *Recommended Practice for Selection and Presentation of DTV Audio*, a bulletin that “provides recommendations to manufacturers to facilitate user setup of audio features in the receiver without professional assistance.”¹⁰⁵ The VPAAC stated that consumer receiving devices could be built in accordance with the recommendations contained in CEA-CEB21.¹⁰⁶ Is this a solution that the Commission should mandate? We seek comment on the costs associated with building a device in compliance with this bulletin, as well as any drawbacks to doing so. Would the benefits of building a device in compliance with CEA-CEB21 outweigh the costs? Are there other industry guidelines that could facilitate compatibility between apparatus and covered services containing multiple audio streams? If we require apparatus to comply with the recommendations contained in CEA-CEB21, are there corresponding requirements that we should impose on broadcasters and MVPDs, and if so, what?

27. We invite comment on the appropriate deadline by which we should require apparatus to meet the requirements that we adopt as part of this proceeding. We note that the Commission has previously imposed a two-year deadline for apparatus requirements, for example, in the *IP Closed Captioning Order*.¹⁰⁷ We ask commenters to justify any deadline they propose by explaining what must be done by that deadline to comply with the new requirements.¹⁰⁸ Should we consider here the argument made by the Consumer Electronics Association (“CEA”) in a pending petition for reconsideration of the *IP Closed Captioning Order* that the compliance deadline should be interpreted to refer only to the date of manufacture, and not to the date of importation?¹⁰⁹

28. In order to address any failures to comply with the new requirements after the established deadline, we propose imposing complaint procedures comparable to those adopted for apparatus complaints in the *IP Closed Captioning Order*. As a preliminary matter, we seek comment on whether the Commission should require MVPDs that provide set-top boxes to provide customer support services to assist consumers who are blind or visually impaired to navigate between the main and secondary audio streams to access video description and accessible emergency information.¹¹⁰ Would such a requirement

¹⁰³ VPAAC Second Report: Video Description at 26.

¹⁰⁴ *Id.* at 25. See also NAB Comments at 5.

¹⁰⁵ CEA-CEB21, *Recommended Practice for Selection and Presentation of DTV Audio*, June 2011, available at <http://www.ce.org/Standards/Standard-Listings/R4-3-Television-Data-Systems-Subcommittee/CEA-CEB21.aspx>.

¹⁰⁶ VPAAC Second Report: Access to Emergency Information at 10.

¹⁰⁷ *IP Closed Captioning Order*, 27 FCC Rcd at 859, ¶ 122.

¹⁰⁸ See Comments of the Consumer Electronics Association at ii, 4, 12-13 (urging the Commission to defer action to implement a mechanism for the transmission and reception of video-described content until the industry develops a consensus solution) (“CEA Comments”); Lieberg Reply at 5 (suggesting a deadline of no more than 18 months); MCB Reply at 2 (expressing disappointment at an additional two-year period for the industry to begin providing accessible equipment, and urging the Commission to adopt a shorter deadline).

¹⁰⁹ See Petition for Reconsideration of the Consumer Electronics Association, MB Docket No. 11-154, at 19-21 (filed Apr. 30, 2012) (“CEA Recon. Petition”).

¹¹⁰ See VPAAC Second Report: Access to Emergency Information at 7 (noting that the effective use of video description and emergency information provided via a secondary audio stream “requires convenient, reliable and readily available access” to the secondary audio stream and referring readers to a further discussion in the *VPAAC Report on User Interfaces, and Video Programming Guides and Menus*). See also VPAAC Second Report: Video Description at 26 (recommending that “MVPDs and local broadcast stations establish processes to address both immediate and longer term customer concerns regarding their video description service”).

help fulfill the CVAA's mandate that apparatus have the capability to decode *and make available* video description and accessible emergency information, *e.g.*, does the use of the term "make available" in the statute reasonably encompass more than simply apparatus functionality?¹¹¹ Would such requirements benefit consumers and industry by encouraging the resolution rather than the filing of consumer complaints? Would consumers and industry benefit from the provision and publication of contact information for resolution of consumer concerns, such as we require in our closed captioning rules?¹¹² How should the Commission evaluate the potential benefits of a customer support requirement and the incremental costs, which we expect would be relatively minimal to the extent that a company already provides customer support services? What else can be done to make legacy equipment more accessible to and available to individuals with visual disabilities?

29. With respect to the filing of complaints, we propose that complaints alleging a violation should include: (a) the name, postal address, and other contact information of the complainant, such as telephone number or email address; (b) the name and contact information, such as postal address, of the apparatus manufacturer or provider; (c) information sufficient to identify the software or device used to view or to attempt to view video programming with video description or emergency information; (d) the date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus to view video programming with video description or emergency information; (e) a statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules; (f) the specific relief or satisfaction sought by the complainant; and (g) the complainant's preferred format or method of response to the complaint.¹¹³ In addition, we propose that a complaint alleging a violation of the apparatus rules related to emergency information and video description may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), e-mail, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted will be blind or visually impaired, we also note that, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer and such communication will be deemed to be a written complaint. We also propose that the Commission will forward such complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved, and that the Commission be permitted to request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules. Do the proposed requirements for apparatus related to video description and emergency information necessitate any revisions to FCC Form 2000C, the disability access complaint form, and if so, what revisions are needed?

2. Apparatus Subject to Section 203 of the CVAA

30. In this section, we discuss which apparatus should be subject to the video description and emergency information requirements of Section 203 of the CVAA. We propose at this time to apply the video description and emergency information requirements of Section 203 of the CVAA only to apparatus designed to receive, play back, or record television broadcast services or MVPD services.¹¹⁴ In other words, for purposes of this proceeding, we propose to limit the scope of the apparatus rules that the Commission will adopt in this proceeding to apparatus that make available the type of programming that

¹¹¹ 47 U.S.C. § 303(u)(1)(B) and (C).

¹¹² 47 C.F.R. § 79.1(i).

¹¹³ *IP Closed Captioning Order*, 27 FCC Rcd at 859-60, ¶ 123.

¹¹⁴ *See supra* ¶ 6.

is subject to our existing emergency information rules, as set forth in Section 79.2 of our rules, and our existing video description rules, as set forth in Section 79.3 of our rules. Accordingly, we propose that the apparatus requirements discussed herein would not be triggered by apparatus' display of IP-delivered video programming that is not part of a television broadcast service or MVPD service. We believe this is appropriate given that the current video description and emergency information rules will continue to apply to television broadcast services and MVPD services.¹¹⁵ We invite comment on this proposal and analysis. How should this proposal apply to different types of apparatus, for example, to tablet devices that enable users to view television programming as part of an MVPD service? Under this proposal, how would the new requirements we adopt in this proceeding apply to apparatus beyond conventional television equipment, such as televisions and cable boxes, to devices such as video game consoles (*e.g.*, Xbox) to the extent an MVPD enables its subscribers to access its MVPD service through those devices?

31. In the *IP Closed Captioning Order*, the Commission concluded that the scope of “apparatus designed to receive or play back video programming transmitted simultaneously with sound” covered by Section 203 includes physical devices designed to receive or play back video programming, as well as software integrated in those covered devices.¹¹⁶ We propose that the term “apparatus” as used in this proceeding similarly extend to physical devices designed to receive, play back, or record television broadcast or MVPD service video programming as well as integrated software, and we seek comment on that proposal.

32. The Commission also found in the *IP Closed Captioning Order* that an apparatus is “designed to receive or play back video programming transmitted simultaneously with sound” if a device is sold with, or updated by the manufacturer to add, an integrated video player capable of displaying video programming.¹¹⁷ The Commission concluded further that, if apparatus *uses* a picture screen of any size, that means that the apparatus works in conjunction with a picture screen.¹¹⁸ In the *IP Closed Captioning Order*, the Commission also addressed the meaning of the term “technically feasible,” and concluded that if something is technically infeasible, it is not merely difficult, but rather is physically or technically impossible.¹¹⁹

¹¹⁵ *See id.*

¹¹⁶ *IP Closed Captioning Order*, 27 FCC Rcd at 839-40, ¶ 93 (“The CVAA does not define the term ‘apparatus,’ requiring the Commission to interpret the term to determine the exact meaning and extent of the statute’s reach. Taking into account the statutory language and purpose, the record in this proceeding, and the conclusions the Commission reached in the *ACS Order*, we interpret this language to apply to hardware (that is, physical devices such as set-top boxes, PCs, smartphones, and tablets) designed to receive or play back video programming transmitted simultaneously with sound and any integrated software (that is, software installed in the device by the manufacturer before sale or that the manufacturer requires the consumer to install after sale).”) (footnote omitted).

¹¹⁷ *Id.* at 842, ¶ 95 (“Our decision to cover ‘integrated video players’ is consistent with the statutory language of Section 203 of the CVAA which covers those apparatus ‘designed to receive or play back video programming transmitted simultaneously with sound.’”) (footnote omitted). We note that a pending petition for reconsideration of the *IP Closed Captioning Order* seeks a Commission determination that the scope of the apparatus requirements adopted in that proceeding pursuant to Section 203 of the CVAA should apply only to apparatus that include “video programming” players, as that term is defined in the CVAA, and not more broadly to any apparatus that include a “video player.” *See* CEA Recon. Petition at 3-5. The CEA Recon. Petition also argues that the Commission misinterpreted the phrase “designed to,” claiming that the phrase instead refers to the subjective intent of the manufacturer rather than the objective fact that the product was designed with this capability. *Id.* at 5-8. The CEA Recon. Petition remains pending before the Commission.

¹¹⁸ *IP Closed Captioning Order*, 27 FCC Rcd at 842-43, ¶ 96 (stating that this includes “devices designed to work in conjunction with a screen, though not including a screen themselves, such as set-top boxes, personal computers, and other receiving devices separated from a screen”).

¹¹⁹ *Id.* at 844, ¶ 98.

33. We propose to apply the interpretation of “technically feasible,” “designed to receive or play back video programming transmitted simultaneously with sound,” and “uses a picture screen of any size” from the *IP Closed Captioning Order* to the present video description and emergency information context. We seek comment on this proposal. We note that the *IP Closed Captioning Order* interpreted the same provisions of Section 203 of the CVAA that are at issue in this proceeding, and accordingly, we see no basis to deviate from the Commission’s carefully considered prior interpretations of “technically feasible,” “designed to receive or play back video programming transmitted simultaneously with sound,” or “uses a picture screen of any size.” We note, however, that unlike the IP closed captioning context, we propose to apply the rules in this context, as discussed above, only to apparatus designed to receive, play back, or record television broadcast services or MVPD services. As in the *IP Closed Captioning Order*, we propose to permit parties to raise technical infeasibility as a defense to a complaint or, alternatively, to file a request for a ruling under Section 1.41 of the Commission’s rules *before* manufacturing or importing the product, and we invite comment on this proposal.¹²⁰

34. Consistent with the *IP Closed Captioning Order*, we propose to include removable media play back apparatus, such as DVD and Blu-ray players, within the scope of the new requirements, but only to the extent that they receive, play back, or record television broadcast services or MVPD services.¹²¹ We seek comment on whether this proposal is the best reading of the statute. We also propose excluding commercial video equipment, including professional movie theater projectors and similar types of professional equipment.¹²² We propose this exclusion because we believe that a typical consumer would not view televised video programming via a professional movie theater projector or similar professional equipment.¹²³ We invite comments on the costs and benefits of our proposal to include removable media players within the scope of the new requirements while excluding commercial video equipment. Should we require only video description, and not emergency information, to be accessible via removable media players, since generally we expect that emergency information will no longer be pertinent at the time consumers play back video programming on removable media players? Or, might consumers wish to preserve the emergency information, such as information about shelter locations, school closings, or alternative evacuation routes on removable media – in which case, our rules should cover those devices as well? If removable media play back apparatus are made capable of playing back a secondary audio stream with video description, would they necessarily also be capable of playing back emergency information on a secondary audio stream? Would removable media apparatus be capable of distinguishing between or providing video description but not emergency information?

3. Achievability, Display-Only Monitors, and Purpose-Based Waivers

35. Section 203 of the CVAA creates and authorizes exceptions for certain categories of apparatus that otherwise would be subject to the Section 203 requirements.¹²⁴ Specifically, Section 203

¹²⁰ *Id.* at 845, ¶ 98; 47 C.F.R. § 1.41 (permitting parties to file informal requests for Commission action, based on a clear and concise showing of the facts relied on and relief sought, among other requirements).

¹²¹ *IP Closed Captioning Order*, 27 FCC Rcd at 845-46, ¶ 99. We note that the CEA Recon. Petition argues that the Commission should not treat removable media players as apparatus covered by the captioning rules. *See* CEA Recon. Petition at 8-18.

¹²² *IP Closed Captioning Order*, 27 FCC Rcd at 846-47, ¶ 101.

¹²³ Additionally, the legislative history of the CVAA explains that Section 203(a) was intended to “ensure[] that devices *consumers use* to view video programming are able to . . . decode, and make available the transmission of video description services, and decode and make available emergency information.” *See* House Committee Report at 30 (emphasis added); Senate Committee Report at 14 (emphasis added). We therefore believe that Congress intended the Commission’s regulations to cover apparatus that are used by consumers, which would not include professional or commercial equipment.

¹²⁴ Pub. L. No. 111-260, § 203(a)-(b).

provides that certain apparatus must meet the requirements of that section only if “achievable,” as that word is defined in Section 716 of the Act.¹²⁵ The achievability exception applies to apparatus “that use a picture screen that is less than 13 inches in size.”¹²⁶ The achievability exception also applies to “apparatus designed to record video programming transmitted simultaneously with sound.”¹²⁷ Section 203 also states that “any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements”¹²⁸ Further, Section 203 permits the Commission:

on its own motion or in response to a petition by a manufacturer, to waive the requirements . . . for any apparatus or class of apparatus—

- (i) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or
- (ii) for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.¹²⁹

36. We propose to model the scope of these exceptions on the *IP Closed Captioning Order*, in which the Commission evaluated each of these exceptions.¹³⁰ Regarding achievability, the Commission adopted a flexible approach by which a manufacturer may raise achievability as a defense to a complaint alleging a violation of Section 203, or it may seek a determination of achievability from the Commission *before* manufacturing or importing the apparatus.¹³¹ The Commission found that the

¹²⁵ Section 716 of the Communications Act of 1934, as amended (the “Act”), defines “achievable” as “with reasonable effort or expense, as determined by the Commission,” and it directs the Commission to consider the following factors in determining whether the requirements of a provision are achievable: “(1) 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. (2) 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. (3) The type of operations of the manufacturer or provider. (4) 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.” 47 U.S.C. § 617(g).

¹²⁶ 47 U.S.C. § 303(u)(2)(A).

¹²⁷ 47 U.S.C. § 303(z)(1). Similar to the Commission’s reasoning in the *IP Closed Captioning Order*, here “we expect identifying apparatus designed to record to be straightforward,” and we propose that “when devices such as DVD, Blu-ray, and other removable media recording devices are capable of recording video programming, they also qualify as recording devices under Section 203(b) and therefore” are subject to the requirements that the CVAA imposes on recording devices. *IP Closed Captioning Order*, 27 FCC Rcd at 854, ¶ 114. We invite comment on this interpretation.

¹²⁸ 47 U.S.C. § 303(u)(2)(B). In addition to the statutory exception for display-only video monitors, we note that it does not seem possible that such a monitor could enable the selection of an audio stream, such as an audio stream used for the provision of video description or emergency information, because by definition it is display-only. We seek comment on this interpretation.

¹²⁹ 47 U.S.C. § 303(u)(2)(C).

¹³⁰ *IP Closed Captioning Order*, 27 FCC Rcd at 848-50, ¶¶ 104-108.

¹³¹ *Id.* at 848-49, ¶ 105. The Commission also stated that, in evaluating evidence offered to prove that compliance was not achievable, it would be informed by the analysis in the *ACS Order*. *See id.* at 849, ¶ 105. *See also Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 26 FCC Rcd 14557, 14607-19, ¶¶ 119-148 (2011) (“*ACS Order*”). If a manufacturer seeks a Commission determination of achievability before manufacturing or (continued....)

exemption for display-only video monitors is self-explanatory and thus incorporated the language of the statutory provision directly into its rules, and the Commission also provided that a manufacturer may make a request for a Commission determination as to whether its device qualifies for this exemption.¹³² As for purpose-based waivers, another type of exception permitted by the statute, the Commission concluded that it would address any such waiver requests on a case-by-case basis, and it stated that waivers would be available prospectively for manufacturers seeking certainty prior to the sale of a device.¹³³ What impact, if any, would the proposed scope of our rules in this proceeding,¹³⁴ if adopted, have on the need for such waivers? We seek comment on whether the scope of these exceptions as adopted in the *IP Closed Captioning Order* should govern in the present context. Is there any reason to deviate from the Commission's previous interpretation of these exceptions?

4. Alternate Means of Compliance

37. We propose to implement here the same approach to alternate means of compliance that we adopted in the *IP Closed Captioning Order*.¹³⁵ As set forth in Section 203 of the CVAA, “[a]n entity may meet the requirements of sections 303(u), 303(z), and 330(b) of [the Act] through alternate means than those prescribed by regulations pursuant to subsection (d) if the requirements of those sections are met, as determined by the Commission.”¹³⁶ We propose that, should an entity seek to use an “alternate means” to comply with the requirements for apparatus with regard to video description and emergency information, that entity could either (i) request a Commission determination that the proposed alternate means satisfies the statutory requirements through a request pursuant to Section 1.41 of our rules,¹³⁷ or (ii) claim in defense to a complaint or enforcement action that the Commission should determine that the party's actions were permissible alternate means of compliance. Rather than specify what may constitute a permissible “alternate means,” we propose to address any specific requests from parties subject to the new rules when they are presented to us. We seek comment on these proposals. Alternatively, given the nature of emergency information, should we impose certain standards that any permissible alternate means must meet?

(Continued from previous page) _____
importing an apparatus, it would make such a request pursuant to Section 1.41 of the Commission's rules. *See* 47 C.F.R. § 1.41.

¹³² *IP Closed Captioning Order*, 27 FCC Rcd at 850, ¶ 108. A manufacturer would make such a request pursuant to Section 1.41 of the Commission's rules. *See* 47 C.F.R. § 1.41.

¹³³ *IP Closed Captioning Order*, 27 FCC Rcd at 849-50, ¶¶ 106-107; 47 U.S.C. § 303(u)(2)(C). *See also* 47 C.F.R. § 1.41. The Commission also quoted the House and Senate Committee Reports, which state that a waiver under these provisions is available “where, for instance, a consumer typically purchases a product for a primary purpose other than viewing video programming, and access to such programming is provided on an incidental basis.” *IP Closed Captioning Order*, 27 FCC Rcd at 849, ¶ 106. *See also* House Committee Report at 30; Senate Committee Report at 14. Waiver of the Commission's rules is also subject to our general waiver standard, which requires good cause and a showing that particular facts make compliance inconsistent with the public interest. 47 C.F.R. § 1.3.

¹³⁴ *See supra* ¶¶ 6 and 30.

¹³⁵ *IP Closed Captioning Order*, 27 FCC Rcd at 831, ¶ 74 and 858-59, ¶ 121.

¹³⁶ Pub. L. No. 111-260, § 203(e).

¹³⁷ 47 C.F.R. § 1.41.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

38. As required by the Regulatory Flexibility Act of 1980 (“RFA”),¹³⁸ the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) relating to this *NPRM*. The IRFA is attached to this *NPRM* as Appendix B.

B. Paperwork Reduction Act

39. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (“OMB”) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.¹³⁹ In addition, pursuant to the Small Business Paperwork Relief Act of 2002,¹⁴⁰ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”¹⁴¹

C. Ex Parte Rules

40. Permit-But-Disclose. The proceeding this *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁴² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

D. Filing Requirements

41. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,¹⁴³ interested parties may file comments and reply comments on or before the dates indicated on the

¹³⁸ 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. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (“CWAAA”).

¹³⁹ Pub. L. No. 104-13.

¹⁴⁰ Pub. L. No. 107-198.

¹⁴¹ 44 U.S.C. § 3506(c)(4).

¹⁴² 47 C.F.R. §§ 1.1200 et seq.

¹⁴³ See *id.* §§ 1.415, 1.419.

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS").¹⁴⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 must be addressed to 445 12th Street, SW, Washington, DC 20554.

42. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

43. People with Disabilities. 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 FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

44. Additional Information. For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, or Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

V. ORDERING CLAUSES

45. 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(u) and (z), 330(b), and 713(g), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(u) and (z), 330(b), and 613(g), this *Notice of Proposed Rulemaking* **IS ADOPTED**.

¹⁴⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

The Federal Communications Commission proposes to amend Part 79 of Title 47 of the Code of Federal Regulations (CFR) as follows:

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

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

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

2. Amend Section 79.2 to revise paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(3)(ii) to read as follows:

§ 79.2 Accessibility of programming providing emergency information.

* * * * *

(b) * * *

(1) * * *

(ii) Emergency information that is provided visually during a regularly scheduled newscast, or newscast that interrupts regular programming, must be made accessible to persons with visual disabilities; and

(iii) Emergency information that is provided visually during programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone, and beginning [INSERT DATE] must be made accessible to persons with visual disabilities through the use of a secondary audio stream to provide the emergency information aurally.

* * * * *

(3) * * *

(ii) Any video description provided should not block any emergency information.

* * * * *

3. Add § 79.105 to read as follows:

§ 79.105 Video description and emergency information decoder requirements for all apparatus.

(a) Effective [INSERT DATE], all apparatus designed to receive or play back video programming transmitted simultaneously with sound that is part of a broadcast or multichannel video programming distributor service, 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 have the capability to decode and make available the following services, if technically feasible, unless otherwise provided herein:

(1) The transmission and delivery of video description services as described in section 79.3 of this Part;

and

(2) Emergency information in a manner that is accessible to individuals who are blind or visually impaired as described in section 79.2 of this Part.

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 video description and emergency information requirements of this section pursuant to § 1.41 of this chapter, 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 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.

4. Add § 79.106 to read as follows:

§ 79.106 Video description and emergency information decoder requirements for recording devices.

(a) Effective [INSERT DATE], all apparatus designed to record video programming transmitted simultaneously with sound that is part of a broadcast or multichannel video programming distributor service, 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 section 79.105(b)(3).

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) All apparatus subject to this section must enable the rendering or the pass through of video description signals and emergency information (as that term is defined in section 79.2 of this title) such that viewers are able to activate and de-activate the video description as the video programming is played back on a picture screen of any size.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rule Changes

2. The Federal Communications Commission (“Commission”) initiates this proceeding to implement the provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”)⁴ requiring that emergency information be made accessible to individuals who are blind or visually impaired and that certain equipment be capable of delivering video description and emergency information to those individuals. First, pursuant to Section 202 of the CVAA, the *NPRM* proposes to make televised emergency information⁵ more accessible to individuals who are blind or visually impaired by requiring the use of a secondary audio stream to provide emergency information aurally that is conveyed visually during programming other than newscasts.⁶ Second, the *NPRM* seeks comment under Section 203 of the CVAA on how to ensure that television apparatus are able to make available video description,⁷ as well as to make emergency information accessible to individuals who are blind or visually impaired.⁸ Our Section 203 discussion focuses on the availability of secondary audio streams, because

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).

² See 5 U.S.C. § 603(a).

³ See *id.*

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 “Emergency information” is defined in the Commission’s rules as “[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency.” 47 C.F.R. § 79.2(a)(2). Emergency information might pertain to emergencies such as “tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.” *Id.* “Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.” Note to 47 C.F.R. § 79.2(a)(2).

⁶ *NPRM* Section III.A.

⁷ “Video description” is defined as “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.” 47 C.F.R. § 79.3(a)(3).

⁸ *NPRM* Section III.B.

that is both the mechanism for providing video description and our proposed mechanism for making emergency information accessible.⁹ The *NPRM* proposes at this time to apply the video description and emergency information requirements of Section 203 of the CVAA only to apparatus designed to receive, play back, or record television broadcast services or MVPD services. Our goal in this proceeding is to enable individuals who are blind or visually impaired to access emergency information and video description services more easily. The proposed revisions to our rules will help fulfill the purpose of the CVAA to “update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”¹⁰

B. Legal Basis

3. The proposed action is authorized 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(u) and (z), 330(b), and 713(g), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(u) and (z), 330(b), and 613(g).

C. Description and Estimate of the Number of Small Entities to Which the Proposed 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 proposed rules, if adopted.¹¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁴ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of “Wired Telecommunications Carriers,” which 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. Transmission facilities may be based

⁹ A separate proceeding will address Sections 204 and 205 of the CVAA, which pertain to user interfaces and video programming guides and menus. Public Notice, *Media Bureau and Consumer and Governmental Affairs Bureau Seek Comment on Second VPAAC Report: User Interfaces, and Video Programming Guides and Menus*, 27 FCC Rcd 4191 (2012).

¹⁰ H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010) (“House Committee Report”); S.Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010) (“Senate Committee Report”).

¹¹ 5 U.S.C. § 603(b)(3).

¹² 5 U.S.C. § 601(6).

¹³ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in 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).

¹⁴ 15 U.S.C. § 632.

on a single technology or a combination of technologies.”¹⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁶ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁷ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.¹⁸ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

6. *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.¹⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁰ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²¹ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.²² Thus, under this second size standard, most cable systems are small.

7. *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.”²³ 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.²⁴ Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard.²⁵ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated

¹⁵ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers.

¹⁶ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

¹⁷ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

¹⁸ *See id.*

¹⁹ 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).

²⁰ 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.

²¹ 47 C.F.R. § 76.901(c).

²² 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.

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

²⁴ 47 C.F.R. § 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

²⁵ *See BROADCASTING & CABLE YEARBOOK 2010* at C-2 (2009) (data current as of Dec. 2008).

with entities whose gross annual revenues exceed \$250 million,²⁶ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

8. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”²⁷ The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.²⁸ The Commission has estimated the number of licensed commercial television stations to be 1,387.²⁹ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.³⁰ We therefore estimate that the majority of commercial television broadcasters are small entities.

9. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations³¹ 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. 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 does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

10. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.³² These stations are non-profit, and therefore considered to be small entities.³³

11. *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

²⁶ 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. § 76.901(f).

²⁷ U.S. Census Bureau, 2007 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁸ 13 C.F.R. § 121.201, NAICS code 515120.

²⁹ *See FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

³⁰ We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

³¹ “[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. § 21.103(a)(1).

³² *See FCC News Release*, “Broadcast Station Totals as of December 31, 2011,” dated January 6, 2012, http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.

³³ *See generally* 5 U.S.C. §§ 601(4), (6).

census category, “Wired Telecommunications Carriers,”³⁴ 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.³⁵ Census data for 2007 shows that there were 31,996 establishments that operated that year.³⁶ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.³⁷ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. 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).³⁸ Each currently offers subscription services. DIRECTV³⁹ and EchoStar⁴⁰ 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.

12. *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.⁴¹ The second has a size standard of \$25 million or less in annual receipts.⁴²

13. 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 reselling satellite telecommunications.”⁴³ Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year.⁴⁴ Of this total, 533 establishments had annual receipts of under \$10 million or less, and 74 establishments had receipts of \$10 million or more.⁴⁵

³⁴ See 13 C.F.R. § 121.201, 2007 NAICS code 517110. The 2007 NAICS definition of the category of “Wired Telecommunications Carriers” is in paragraph 5, above.

³⁵ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

³⁶ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

³⁷ See *id.*

³⁸ 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).

³⁹ 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.

⁴⁰ 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. See *13th Annual Report*, 24 FCC Rcd at 687, Table B-3. 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.

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

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

⁴³ U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

⁴⁴ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.

⁴⁵ See *id.*

Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

14. 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.”⁴⁶ For this category, Census data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year.⁴⁷ Of those 2,639 establishments, 2,333 operated with annual receipts of less than \$10 million and 306 with annual receipts of \$10 million or more.⁴⁸ Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by our action.

15. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”⁴⁹ 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.⁵⁰ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁵¹ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁵² Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

16. *Home Satellite Dish (“HSD”) Service*. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of “Wired Telecommunications Carriers.”⁵³ The SBA has developed a small business size standard for this category, which is: all such firms having

⁴⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

⁴⁷ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

⁴⁸ *See id.*

⁴⁹ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

⁵⁰ *See id.*

⁵¹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁵² *See id.*

⁵³ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

1,500 or fewer employees.⁵⁴ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁵⁵ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁵⁶ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

17. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁵⁷ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁵⁸ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁵⁹ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁶⁰ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁶¹

⁵⁴ *See id.*

⁵⁵ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁵⁶ *See id.*

⁵⁷ *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, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995).

⁵⁸ 47 C.F.R. § 21.961(b)(1).

⁵⁹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1,500 or fewer employees.

⁶⁰ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁶¹ *Id.* at 8296.

Auction 86 concluded in 2009 with the sale of 61 licenses.⁶² Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

18. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, "Wired Telecommunications Carriers" have been 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. Transmission facilities may be based on a single technology or a combination of technologies."⁶³ Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁶⁴ For these services, the Commission uses the SBA small business size standard for Wired Telecommunications Carriers, which is 1,500 or fewer employees.⁶⁵ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁶⁶ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁶⁷ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.⁶⁸ The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁶⁹

19. *Fixed Microwave Services.* Microwave services include common carrier,⁷⁰ private-operational fixed,⁷¹ and broadcast auxiliary radio services.⁷² They also include the Local Multipoint

⁶² *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

⁶³ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

⁶⁴ *Id.*

⁶⁵ *See id.*

⁶⁶ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁶⁷ *See id.*

⁶⁸ <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

⁶⁹ The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁷⁰ *See* 47 C.F.R. Part 101, Subparts C and I.

⁷¹ *See* 47 C.F.R. Part 101, Subparts C and H.

⁷² Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

Distribution Service (LMDS),⁷³ the Digital Electronic Message Service (DEMS),⁷⁴ and the 24 GHz Service,⁷⁵ where licensees can choose between common carrier and non-common carrier status.⁷⁶ At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons.⁷⁷ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁷⁸ For the category of "Wireless Telecommunications Carriers (except Satellite),"⁷⁹ Census data for 2007 show that there were 11,163 firms that operated for the entire year.⁸⁰ Of this total, 10,791 firms had employment of 999 or fewer employees and 372 had employment of 1,000 employees or more.⁸¹ Thus, under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

20. *Open Video Systems.* 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.⁸² The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁸³ OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."⁸⁴ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁸⁵ Census data for 2007 shows that

⁷³ See 47 C.F.R. Part 101, Subpart L.

⁷⁴ See 47 C.F.R. Part 101, Subpart G.

⁷⁵ See *id.*

⁷⁶ See 47 C.F.R. §§ 101.533, 101.1017.

⁷⁷ 13 C.F.R. § 121.201, 2007 NAICS code 517210.

⁷⁸ See *id.* The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁷⁹ 13 C.F.R. § 121.201, NAICS code 517210.

⁸⁰ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table. Available Census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁸¹ See *id.*

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

⁸³ See 47 U.S.C. § 573.

⁸⁴ U.S. Census Bureau, 2007 NAICS Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁵ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

there were 31,996 establishments that operated that year.⁸⁶ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁸⁷ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁸⁸ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁸⁹ The Commission does not have financial or employment information regarding the entities 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.

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.”⁹⁰ The SBA has developed a small business size standard for this category, which is: all such firms having \$15 million dollars or less in annual revenues.⁹¹ 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. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year.⁹² Of that number, 462 operated with annual revenues of \$9,999,999 million dollars or less.⁹³ 197 operated with annual revenues of 10 million or more.⁹⁴ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

22. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. 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.”⁹⁵ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field

⁸⁶ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁸⁷ *See id.*

⁸⁸ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

⁸⁹ *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.

⁹⁰ U.S. Census Bureau, 2007 NAICS Definitions, “515210 Cable and Other Subscription Programming,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁹¹ 13 C.F.R. § 121.201, 2007 NAICS code 515210.

⁹² *See*

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=table.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ 15 U.S.C. § 632.

of operation because any such dominance is not “national” in scope.⁹⁶ 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.

23. *Incumbent Local Exchange Carriers (“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.⁹⁷ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁹⁸ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.⁹⁹ Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

24. *Competitive Local Exchange Carriers, 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.¹⁰⁰ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁰¹ Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.¹⁰² Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. 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.

25. *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.¹⁰³ 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. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues.¹⁰⁴ To gauge small business prevalence

⁹⁶ 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).

⁹⁷ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

⁹⁸ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

⁹⁹ See *id.*

¹⁰⁰ 13 C.F.R. § 121.201, 2007 NAICS code 517110.

¹⁰¹ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ2&prodType=table.

¹⁰² See *id.*

¹⁰³ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁰⁴ 13 C.F.R. § 121.201, 2007 NAICS code 512110.

in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year.¹⁰⁵ 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.¹⁰⁶ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

26. *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.”¹⁰⁷ 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. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues.¹⁰⁸ 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. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year.¹⁰⁹ Of these, 434 had annual receipts of \$24,999,999 or less, and 16 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more.¹¹⁰ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

27. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”¹¹¹ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year.¹¹² Of those 919 establishments, 771 operated with 99 or fewer employees, and 148

¹⁰⁵ See

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

¹⁰⁶ *Id.*

¹⁰⁷ U.S. Census Bureau, 2007 NAICS Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁰⁸ 13 C.F.R. § 121.201, 2007 NAICS code 512120.

¹⁰⁹ See

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

¹¹⁰ *Id.*

¹¹¹ The NAICS Code for this service 334220. See 13 C.F.R § 121.201; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹¹² http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table.

operated with 100 or more employees.¹¹³ Thus, under that size standard, the majority of establishments can be considered small.

28. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.¹¹⁴ Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year.¹¹⁵ Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees.¹¹⁶ Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

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

29. Certain proposed rule changes discussed in the *NPRM* would affect reporting, recordkeeping, or other compliance requirements. In general, the *NPRM* proposes to satisfy the requirements of Section 202(a) of the CVAA with regard to making emergency information accessible to persons who are blind or visually impaired by mandating the use of a secondary audio stream to provide the emergency information aurally and concurrently with the emergency information being conveyed visually during non-news programming.¹¹⁷ The *NPRM* also makes certain proposals regarding apparatus requirements for emergency information and video description.¹¹⁸

30. Specifically, on the topic of apparatus requirements, the Commission proposes to permit parties to raise technical infeasibility as a defense to a complaint or, alternatively, to file a request for a ruling under Section 1.41 of the Commission's rules *before* manufacturing or importing the product.¹¹⁹ Similarly, the Commission proposes to permit a manufacturer to raise achievability as a defense to a complaint alleging a violation of Section 203, or to seek a determination of achievability from the Commission *before* manufacturing or importing the apparatus.¹²⁰ Further, the Commission proposes that a manufacturer may make a request for a Commission determination as to whether its apparatus is an exempt display-only video monitor, and that the Commission will make purpose-based waivers available prospectively and such waivers will be addressed on a case-by-case basis.¹²¹

31. In the *NPRM*, the Commission also seeks comment on complaint filing for the proposed rules related both to access to emergency information¹²² and apparatus requirements for video description and emergency information.¹²³

¹¹³ *See id.*

¹¹⁴ 13 C.F.R § 121.201, NAICS Code 334310.

¹¹⁵ http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_3111&prodType=table.

¹¹⁶ *See id.*

¹¹⁷ *NPRM*, Section III.A.

¹¹⁸ *Id.*, Section III.B.

¹¹⁹ *Id.*, Section III.B.2.

¹²⁰ *Id.*, Section III.B.3.

¹²¹ *Id.*

¹²² *Id.*, Section III.A.

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

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for 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 small entities.¹²⁴

33. We emphasize at the outset that, although alternatives to minimize economic impact have been and are being considered as part of this proceeding, our proposals are governed by the congressional mandate contained in Sections 202(a) and 203 of the CVAA. The *NPRM* seeks comment on whether any alternatives to the proposed use of the secondary audio stream would be preferable, and how the costs and benefits of any alternate proposals would compare to the costs and benefits of the proposed use of the secondary audio stream.¹²⁵ Regarding accessible emergency information, the *NPRM* seeks comment on certain specified alternative approaches (for example, including a shortened audio version of the textual emergency information on the primary stream, or broadcasting a 5 to 10 second audio message after three high-pitched tones announcing the start of a textual message), and it additionally seeks comment on any additional alternatives that may become viable in the future (for example, “dipping” or lowering the main program audio and playing an aural message over the lowered audio, providing screen reader software or devices on request, enabling users to select and enlarge emergency crawl text, providing guidance for consumers, and using an Internet-based standardized application to filter emergency information by location).¹²⁶ Regarding apparatus requirements for emergency information and video description, the *NPRM* proposes that parties may use alternate means of compliance to the rules adopted pursuant to Section 203 of the CVAA, and it proposes to address any specific requests from parties subject to new rules when they are presented to the Commission, rather than specifying what may constitute a permissible “alternate means.”¹²⁷ Individual entities, including smaller entities, may benefit from this provision.

34. Overall, in proposing rules governing accessible emergency information and apparatus requirements for emergency information and video description, we believe that we have appropriately considered both the interests of individuals who are blind or visually impaired and the interests of the entities who will be subject to the rules, including those that are smaller entities. Our efforts are consistent with Congress’ goal of “updat[ing] the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”¹²⁸

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

35. None.

(Continued from previous page) _____

¹²³ *Id.*, Section III.B.1.

¹²⁴ 5 U.S.C. § 603(c).

¹²⁵ *NPRM*, ¶ 18.

¹²⁶ *Id.*, Section III.A.

¹²⁷ *Id.*, Section III.B.4.

¹²⁸ House Committee Report at 19; Senate Committee Report at 1.