

FCC FACT SHEET***Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System
Blue Alert NPRM**

Notice of Proposed Rulemaking - PS Docket No. 15-94

Background:

Similar to the use of AMBER Alerts to recover missing children, states may use Blue Alerts to notify the public when there is actionable information related to a law enforcement officer who is missing, seriously injured or killed in the line of duty, or if there is an imminent and credible threat to an officer. The Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015 (Blue Alert Act) was enacted to encourage, enhance, and integrate state Blue Alert plans to ensure consistent and effective Blue Alert delivery nationwide. The Blue Alert Act identifies the Department of Justice (DOJ) as the national coordinator for Blue Alerts, responsible for establishing voluntary guidelines for states and local governments to use in developing compatible and integrated Blue Alert plans. The DOJ has identified the need for a dedicated Blue Alert event code in the Emergency Alert System (EAS), saying that such a code would provide an effective means of galvanizing the necessary public awareness to protect officers. The DOJ additionally states that a dedicated Blue Alert EAS event code would serve as a central and organizing element for Blue Alert plans, thereby facilitating and streamlining new and existing Blue Alert plans into a coordinated national framework. To support the important public policy goal of protecting our nation's law enforcement officials, and in light of DOJ's finding, the Notice of Proposed Rulemaking (NPRM) proposes to revise the Federal Communications Commission's rules to adopt a new EAS event code, "BLU," as the dedicated event code for Blue Alerts.

What the NPRM Would Do:

- Propose to revise the EAS rules to adopt a new EAS event code that will allow the transmission of Blue Alerts to the public over the EAS.
- Seek comment on whether the EAS is an effective means of delivering Blue Alerts.
- Seek comment on whether a dedicated Blue Alert EAS event code would facilitate the implementation of Blue Alerts in a compatible and uniform manner nationwide.
- Seek comment on whether existing EAS event codes are sufficient to convey Blue Alert information.
- Seek comment on whether, and if so how, adopting a Blue Alert EAS event code would impact Wireless Emergency Alerts.
- Seek comment on whether a dedicated Blue Alert EAS event code would increase public recognition of Blue Alerts.

*This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in PS Docket No. 15-94, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

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

In the Matter of)
)
Amendment of Part 11 of the Commission's Rules) PS Docket No. 15-94
Regarding Emergency Alert System)

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

By the Commission:

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (60 days after date of publication in the Federal Register)

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we propose to revise the Federal Communications Commission's (Commission or FCC) Emergency Alert System (EAS) rules¹ to adopt a new EAS event code that will allow the transmission of "Blue Alerts" to the public over the EAS. In doing so, we propose measures to advance the important public policy of protecting our nation's law enforcement officials through facilitating the apprehension of suspects who pose an imminent and credible threat to law enforcement officials and aiding search efforts to locate missing officers.² Further, by initiating this proceeding, we also seek to promote the development of compatible and integrated Blue Alert plans throughout the United States, consistent with the Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015 (Blue Alert Act)³ and the need articulated by the Office of Community Oriented

* This document has been circulated for tentative consideration by the Commission at its June open meeting. The issues referenced in this document and the Commission's ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission's ex parte rules apply and presentations are subject to "permit-but-disclose" ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

¹ 47 CFR § 11.1 et. seq.

² See Exec. Order No. 13774, 82 Fed. Reg. 10695 (Feb. 9, 2017) (Exec. Order No. 13774) (stating that it shall be the policy of the executive branch to "enhance the protection and safety of Federal, State, tribal, and local law enforcement officers . . ."); see also 42 U.S.C. § 14165b(b)(7)(A).

³ Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015, Pub. L. No. 114-12, 129 Stat. 192 (2015).

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Policing Service (COPS Office) of the United States Department of Justice (DOJ) to establish a dedicated EAS event code for Blue Alerts.⁴

II. BACKGROUND

2. *The EAS.* The EAS is a national public warning system through which broadcasters, cable systems, and other service providers (EAS Participants) deliver alerts to the public to warn them of impending emergencies and dangers to life and property.⁵ Although the primary purpose of the EAS is to equip the President with the capability to provide immediate communications and information to the general public during periods of national emergency,⁶ the EAS also is used by other federal agencies, such as the National Weather Service (NWS), to deliver weather-related alerts, as well as by state and local governments to distribute other alerts such as AMBER Alerts.⁷ EAS Participants are required to deliver Presidential alerts; delivery of all other alerts, including NWS weather alerts and state and local EAS alerts, is voluntary.⁸ EAS alerts are configured using the EAS Protocol, which utilizes fixed codes to identify the various elements of an EAS alert so that each alert can deliver accurate, secure, and geographically-targeted alerts to the public. Of particular relevance to this proceeding, the EAS Protocol utilizes a three-character “event code” to describe the nature of the alert (e.g., “CAE” signifies a Child Abduction Emergency, otherwise known as an AMBER Alert).⁹ EAS alerts are distributed in two ways: (1) over-the-air, through a hierarchical, broadcast-based “daisy chain” distribution system,¹⁰ and (2) over the Internet, through the Federal Emergency Management Agency’s Integrated Public Alert and Warning System (IPAWS), which simultaneously sends data-rich alerts in the Common Alerting Protocol (CAP) format to various public alerting systems.¹¹

⁴ U.S. Dep’t of Justice, Office of Community Oriented Policing Services, Rafael Ramos and Wenjian Liu National Blue Alert Report 2016 to Congress at 6 (2016), https://www.cops.usdoj.gov/pdf/blue-alert/2016_report.pdf (2016 Report to Congress) (noting “. . . the need for a dedicated Emergency Alerting System (EAS) event code . . .”). The COPS Office is a component within the DOJ dedicated to community policing. See U.S. Dep’t of Justice, *Community Oriented Policing Services*, <https://cops.usdoj.gov/> (last visited Apr. 19, 2017). The COPS Office is charged with implementing the Blue Alert communications network nationwide. See Memorandum for Director of the Office of Community Oriented Policing Services, *Designation of the National Blue Alert Coordinator* (Sept. 29, 2016).

⁵ An overview of the present organization and functioning of the EAS system is included in the *Second Report and Order*. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, EB Docket No. 04-296, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

⁶ 47 CFR § 11.1.

⁷ AMBER Alert is a voluntary partnership between law-enforcement agencies, broadcasters, transportation agencies, and the wireless industry, to activate an urgent bulletin in the most serious child-abduction cases. The goal of an AMBER Alert is to instantly galvanize the entire community to assist in the search for and safe recovery of a child. See Dep’t of Justice, *AMBER Alert – America’s Missing: Broadcast Emergency Response*, <https://www.amberalert.gov/index.htm> (last visited Apr. 19, 2017).

⁸ See 47 CFR § 11.55(a).

⁹ See 47 CFR § 11.31(c), (e).

¹⁰ See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking*, EB Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642, 646-47, para. 7 (2012) (*Fifth Report and Order*).

¹¹ See, e.g., FEMA, *Integrated Public Alert & Warning System Open Platform for Emergency Networks*, <https://www.fema.gov/integrated-public-alert-warning-system-open-platform-emergency-networks> (last visited Apr. 19, 2016); U.S. Dep’t of Homeland Security, *IT Program Assessment: FEMA – Integrated Public Alert Warning*

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3. *Blue Alerts.* The Blue Alert Act was enacted to encourage, enhance, and integrate the formation of voluntary “Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty, is missing in connection with the officer’s official duties, or an imminent and credible threat that an individual intends to cause the serious injury or death of a law enforcement officer is received, and for other purposes.”¹² As required by the Blue Alert Act, DOJ has designated the COPS Office Director as the National Blue Alert Coordinator (National Blue Alert Coordinator).¹³ Accordingly, the National Blue Alert Coordinator has developed a set of voluntary guidelines (Blue Alert Guidelines) for states to use in developing their Blue Alert plans in a manner that will promote compatible and integrated Blue Alert plans throughout the United States.¹⁴

4. The Blue Alert Guidelines provide three criteria for Blue Alert issuance, any one of which should be met before a Blue Alert is issued.¹⁵ First, an alert may be issued when “the agency confirms that a law enforcement officer has been killed, seriously injured, or attacked and with indications of death or serious injury.”¹⁶ Second, an alert may be issued in the event of a “threat to cause death or serious injury to a law enforcement officer.”¹⁷ Under this criterion, the agency initiating the Blue Alert should confirm that the threat is “imminent and credible,” and, to the extent the threat arises from the acts of a suspect, such suspect, “at the time of receipt of the threat,” should be “wanted by a law enforcement agency.”¹⁸ Third, where a law enforcement officer is reported missing, an agency may issue a Blue Alert if it concludes that “the law enforcement officer is missing in connection with the officer’s official duties” and that “there is an indication of serious injury to or death of the law enforcement officer.”¹⁹ With respect to each of these three scenarios, the agency should not issue the Blue Alert unless “any suspect involved has not been apprehended” and “there is sufficient descriptive information of the suspect, including any vehicle and license tag information.”²⁰ The Blue Alert Act also provides that an alert should be issued only in those areas most likely to result in the apprehension of the suspect,²¹ and that an alert should be suspended once the suspect is apprehended.²²

System (IPAWS), <https://www.dhs.gov/xlibrary/assets/mgmt/itpa-fema-ipaws2012.pdf> (last visited Apr. 19, 2016). CAP is an open, interoperable, XML-based standard that can include multimedia such as streaming audio or video. CAP messages contain standardized fields that facilitate interoperability between and among devices. *See Oasis, Common Alerting Protocol Version 1.2*, <http://docs.oasis-open.org/emergency/cap/v1.2/CAP-v1.2-os.html> (last visited Apr. 28, 2017).

¹² See Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015.

¹³ See Memorandum for Director of Community Oriented Policing Services from the Attorney General, *Designation of the National Blue Alert Coordinator* at 1 (2016).

¹⁴ 42 U.S.C. § 14165b(b)(7)(A)-(B).

¹⁵ Department of Justice Community Oriented Policing Services, *National Blue Alert Network: When to Issue a Blue Alert*, https://cops.usdoj.gov/pdf/blue-alert/blue_alert_guidelines.pdf (last visited Apr. 17, 2017) (*Blue Alert Guidelines*).

¹⁶ See *Blue Alert Guidelines*.

¹⁷ See *Blue Alert Guidelines*.

¹⁸ See *Blue Alert Guidelines*.

¹⁹ See *Blue Alert Guidelines*.

²⁰ See *Blue Alert Guidelines*.

²¹ 42 U.S.C. § 14165b(b)(2)(F)(ii).

²² 42 U.S.C. § 14165b(b)(2)(F)(iv), (b)(3).

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5. Additionally, the National Blue Alert Coordinator is charged with cooperating with the Chairman of the FCC to carry out the Blue Alert Act.²³ In its 2017 Report to Congress, the COPS Office noted that it has complied with this directive by establishing a point of contact with the FCC, and by commencing outreach efforts to pursue a dedicated EAS event code.²⁴

III. DISCUSSION

6. We propose to revise the Commission's EAS rules to add a new "Blue Alert" event code to the EAS and thus "promote compatible and integrated Blue Alert plans throughout the United States" as called for in the Blue Alert Act.²⁵ Several developments support taking this action today. The Blue Alert Act was adopted to help the states provide effective alerts to the public and law enforcement when police and other law enforcement officers are killed or in danger.²⁶ In order to ensure that these state plans are compatible and integrated throughout the United States as envisioned by the Blue Alert Act,²⁷ the Blue Alert Coordinator has made a series of recommendations to Congress. Among them, the Blue Alert Coordinator identified the need for a dedicated EAS event code for Blue Alerts²⁸ and noted the alignment of the EAS with the implementation of the Blue Alert Act.²⁹ We propose that by adopting a dedicated EAS event code to deliver Blue Alerts, our rules can help facilitate the delivery of Blue Alerts to the public in a uniform and consistent manner that promotes the compatible and integrated Blue Alert plans contemplated by the Blue Alert Act. We seek comment on this proposal below.

7. We propose to amend Section 11.31(e) of the EAS rules to add a new "BLU" event code to the codes contained within the EAS Protocol.³⁰ Consistent with the guidance issued by the National Blue Alert Coordinator, we anticipate this code would be used by alert originators to disseminate information related to (1) the serious injury or death of a law enforcement officer in the line of duty, (2) an officer who is missing in connection with their official duties, or (3) an imminent and credible threat that an individual intends to cause serious injury to, or kill, a law enforcement officer.³¹ We also propose that such alerts would be confined to those areas most likely to facilitate capture of the suspect,³² and would be suspended when the suspect is apprehended.³³ As with other non-Presidential alerts, carriage of Blue Alerts and use of the Blue Alert event code would be voluntary.³⁴ We seek comment on this proposal.

²³ 42 U.S.C. § 14165b(d).

²⁴ U.S. Dep't of Justice, Office of Community Oriented Policing Services, Rafael Ramos and Wenjian Liu National Blue Alert Report 2017 to Congress at 7-8 (*2017 Report to Congress*), https://www.cops.usdoj.gov/pdf/blue-alert/2017_report.pdf.

²⁵ 42 U.S.C. § 14165b(b)(2).

²⁶ 42 U.S.C. § 14165b(b)(2)(A)-(E).

²⁷ 42 U.S.C. § 14165b(b)(2).

²⁸ *See 2016 Report to Congress* at 6.

²⁹ *See 2016 Report to Congress* at 8.

³⁰ 47 CFR § 11.31(e).

³¹ *See Blue Alert Guidelines*.

³² 42 U.S.C. § 14165b(b)(2)(F)(ii).

³³ 42 U.S.C. § 14165b(b)(2)(F)(iii).

³⁴ *See, e.g.*, 47 CFR § 11.55(a) ("The EAS may be activated at the State and Local Area levels by EAS Participants at their discretion for day-to-day emergency situations posing a threat to life and property."); 47 CFR § 11.52(d)(5) ("[T]he management of EAS Participants shall determine which header codes will automatically interrupt their

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8. *Efficacy of the EAS as a mechanism for delivering Blue Alerts.* We seek comment on the efficacy of the EAS as a mechanism for the delivery of Blue Alerts. We note that, for over two decades, the EAS has proven to be an effective method of alerting the public and saving lives and property.³⁵ EAS Participants continue to voluntarily transmit thousands of alerts and warnings annually regarding severe weather threats, child abductions, and other local emergencies.³⁶

9. We seek comment on whether the current system could accommodate Blue Alerts as effectively as it does these other types of alerts. Are there constraints that would impede the ability of the EAS to contain the information required under the Blue Alert Guidelines? For example, EAS alerts are subject to a two-minute time limit.³⁷ Can the information required by the Blue Alert Guidelines be communicated within a two-minute time frame? We note that EAS alerts delivered over the IPAWS can contain detailed text files, non-English alerts, or other content-rich data that is not available to EAS alerts delivered via the broadcast-based daisy chain.³⁸ Do Blue Alerts contain extra text files or other data-rich content that would benefit from IPAWS' capabilities? Would it have a negative impact on the value of an EAS Blue Alert that such data-rich content may not be delivered to all EAS Participants, depending on whether they receive the alert through IPAWS or through the broadcast-based daisy chain?

10. Further, EAS Alerts are limited to the geographic contours and service areas of broadcasters and cable service providers. In light of this, are EAS alerts suited to deliver Blue Alerts in a targeted geographic manner, consistent with the Blue Alert Act, which provides that Blue Alerts, to the maximum extent practicable, “be limited to the geographic areas most likely to facilitate the apprehension of the suspect involved or which the suspect could reasonably reach, which should not be limited to state lines”?³⁹ Can EAS Participants distribute Blue Alerts to such smaller, more narrowly targeted geographic areas?⁴⁰ In particular, what is the ability of small cable operator EAS Participants to limit the geographic area of a Blue Alert? To what extent do states use the EAS to send Blue Alerts? Do any states send Blue Alerts outside of the EAS structure? What has been their experience? Would the EAS serve as a more effective means of conveying the information required by the Blue Alert Guidelines?

11. *Implementation of Blue Alerts.* We seek comment on whether—assuming that the EAS would be an efficient manner of distributing Blue Alerts—the establishment of a dedicated EAS event code would help to facilitate the implementation of the Blue Alert Guidelines in a compatible and integrated manner nationwide, as contemplated by the Blue Alert Act.⁴¹ The COPS Office states “a dedicated Blue Alert EAS event code would serve as the central and organizing element for Blue Alert

programming for State and Local Area emergency situations affecting their audiences.”); *see also First Report and Order and Further Notice of Proposed Rule Making*, 20 FCC Rcd at 18628, para. 8.

³⁵ *See Fifth Report and Order*, 27 FCC Rcd 642, 646, para. 6.

³⁶ FCC, Public Safety & Homeland Security Bureau, *Strengthening the Emergency Alert System (EAS): Lessons Learned from the Nationwide EAS Test at 7* (2013).

³⁷ 47 CFR § 11.33(a)(9).

³⁸ FCC, Public Safety & Homeland Security Bureau, *Report: September 28, 2016 Nationwide EAS Test at 5 n.2, 6, 16-17* (2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/DOC-344518A1.pdf.

³⁹ 42 U.S.C. § 14165b (b)(2)(F)(ii).

⁴⁰ We note that, in the future, if ATSC 3.0 DTV is approved by the Commission as proposed in the *ATSC 3.0 NPRM*, television broadcasters using ATSC 3.0 expect to have the capability of tailoring emergency alert information for specific geographic areas. *See Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Notice of Proposed Rulemaking, 32 FCC Rcd 1679, 1673, para. 4 (2017).

⁴¹ *See* 42 U.S.C. § 14165b (b)(2)(E)-(F).

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plans coast-to-coast and greatly facilitate the work of the National Blue Alert Network.”⁴² We seek comment on this statement.

12. As of November 2016, 27 states have implemented Blue Alert plans.⁴³ We observe that states’ implementation of Blue Alert plans vary. For example, Montana and Florida utilize the “Law Enforcement Emergency” (LEW) EAS event code to transmit Blue Alerts,⁴⁴ whereas Washington is creating its own “Blue Alert System” for voluntary cooperation between law enforcement, and radio, television, cable, and satellite systems.⁴⁵ To what extent do current state guidelines for delivering a Blue Alert differ from the Blue Alert Guidelines? Would a dedicated EAS event code help ensure that both Blue Alerts and related outreach are undertaken in a consistent manner nationally? We seek comment on the distribution methods states currently employ to deliver Blue Alerts. To the extent states use different distribution methods to deliver Blue Alerts, do these various distribution methods detract from the effectiveness of Blue Alerts? We seek comment on the experience of any states that have adopted Blue Alerts as part of their statewide alerting systems. We seek comment on whether the adoption of a dedicated EAS Blue Alert event code would encourage EAS Participants to deliver Blue Alerts.

13. We additionally ask whether availability of a dedicated Blue Alert EAS event code would promote the adoption of additional Blue Alert systems throughout the nation. According to the COPS Office, a dedicated EAS event code would “facilitate and streamline the adoption of new Blue Alert plans throughout the nation and would help to integrate existing plans into a coordinated national framework.”⁴⁶ As the National Blue Alert Coordinator noted in its 2016 Report to Congress, a majority of states and territories do not yet have Blue Alert systems.⁴⁷ Would facilitating law enforcement agencies’ ability to utilize existing EAS distribution networks alleviate much of the burden associated with designing and implementing Blue Alert systems and plans? Would the implementation of a dedicated Blue Alert EAS code encourage states that do not have Blue Alert plans to adopt, in whole or in part, existing procedures of states that have implemented Blue Alert plans?⁴⁸ Has the lack of a dedicated Blue Alert EAS event code impeded adoption of Blue Alert plans? Further, would utilizing the nationwide EAS architecture

⁴² COPS Office, *Blue Alert Frequently Asked Questions* (May 2017), https://cops.usdoj.gov/pdf/blue-alert/Blue_Alert_Frequently_Asked_Questions.pdf (*Blue Alert FAQ*).

⁴³ As of November 2016, the following 27 states have a Blue Alert plan: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington. See U.S. Dep’t of Justice Community Oriented Policing Services, *Blue Alert State Plans* (2016); see also Blue Alert Foundation, *National Blue Alert System: About Us*, http://www.bluealert.us/about_us (last visited Apr. 19, 2017).

⁴⁴ See, e.g., State of Montana, *2016 Emergency Alert System (EAS) Plan* at 27 (Mar. 16, 2016), https://www.readygallatin.com/download/website/plans/ST_Plans/MT-EAS-Plan-Mar-16-2016.pdf; IPAWS Non-Weather, *Alert: EAS Law Enforcement Warning* (Jan. 9, 2017), <http://ipawsnonweather.alertblogger.com/?p=13270>.

⁴⁵ U.S. House Committee on Public Safety and Emergency Preparedness, *House Bill Report HB 1820: An Act Relating to the Blue Alert System* (2011), <http://lawfilesexternal.leg.wa.gov/biennium/2011-12/Pdf/Bill%20Reports/House/1820%20HBR%20PSEP%2011.pdf>.

⁴⁶ *Blue Alert FAQ*.

⁴⁷ *2016 Report to Congress* at 5 (noting that, of the nation’s 56 states and territories, 29 do not have Blue Alert systems).

⁴⁸ As of November 2016, the following 27 states have a Blue Alert plan: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington. See U.S. Department of Justice Community Oriented Policing Services, *Blue Alert State Plans* (2016); see also Blue Alert Foundation, *National Blue Alert System: About Us*, http://www.bluealert.us/about_us (last visited Apr. 17, 2017).

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help integrate existing plans into a coordinated national framework? In this regard, would integrating state Blue Alert plans into the EAS help individual states work together when suspects or threats cross state borders, as envisioned by the Blue Alert Act?

14. Alternately, we seek comment on whether existing event codes are sufficient to convey Blue Alert information. According to the COPS Office, there is a lack of urgency associated with existing event codes, which do not “suggest immediate action on the part of broadcasters.”⁴⁹ As noted above, at least two states utilize the “Law Enforcement Warning” (LEW) EAS code to transmit Blue Alerts.⁵⁰ The COPS Office observes, however, that the LEW event code is used for events such as road closures and notifying drivers of hazardous road conditions and is not an effective means to transmit Blue Alerts.⁵¹ We seek comment on this observation. Is the use of LEW effective to provide information to help protect law enforcement officials? For what purposes is LEW otherwise used?⁵² Does utilizing an existing EAS code for a Blue Alert detract from the existing code’s ability to serve its intended purpose? Without adoption of a Blue Alert code, would law enforcement agencies be hampered by being forced to use codes that do not directly apply to the situation, nor convey the necessary information?⁵³ Further, would the use of existing EAS event codes to broadcast a Blue Alert create confusion? Do other event codes contain instructions that might confuse the public or direct the public to take unsafe actions in response to the underlying situation? For example, in the 2016 *NWS Report and Order*, the Commission adopted new dedicated event codes for certain weather events, noting that the existing TOR event code for tornados provided the public with incorrect guidance about what actions to take in response to hurricane-related weather events, such as storm surges.⁵⁴ Is there a similar risk of confusion with using existing EAS event codes in lieu of a dedicated Blue Alert event code?

15. *Public Awareness and Outreach.* We seek comment on how the public may respond to Blue Alert EAS codes. Would a dedicated Blue Alert EAS event code allow law enforcement to provide a warning that the public recognizes immediately as a Blue Alert, e.g., because Blue Alerts would be issued only under specific criteria that are nationally consistent? The COPS Office states that a dedicated EAS event code would “convey the appropriate sense of urgency” and “galvanize the public awareness necessary to protect law enforcement officers and the public from extremely dangerous offenders.”⁵⁵ We seek comment on this position. Would a dedicated event code facilitate consistent and effective public outreach educating the public to recognize and respond to Blue Alerts?

16. In this regard, we seek comment on what actions states have taken to educate the public on Blue Alerts and appropriate responses to Blue Alerts. For example, we note that the Blue Alert Foundation⁵⁶ has prepared model Public Service Announcements (PSAs) for use by states to educate the

⁴⁹ 2017 Report to Congress at 7-8.

⁵⁰ *Supra* note 44.

⁵¹ See 2017 Report to Congress at 7; see also *Blue Alert FAQ*.

⁵² See *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, FCC 02-64, Report and Order, 17 FCC Rcd 4055, 4064, para. 18 (2002) (adopting the LEW event code).

⁵³ See 42 U.S.C. § 14165b (b)(D)(4). For example, when a suspect is at large Blue Alerts are only issued when there is sufficient descriptive information of the suspect, such as a tag number for a vehicle.

⁵⁴ *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PSHSB Docket No. 15-94, Report and Order, 31 FCC Rcd 7915, 7919, para. 8 (2016) (*NWS Report and Order*).

⁵⁵ See 2017 Report to Congress at 7.

⁵⁶ The Blue Alert Foundation is a non-profit entity whose mission is to “operate, maintain & improve the National Blue Alert System.” Blue Alert Foundation, *National Blue Alert System: About Us*, http://www.bluealert.us/about_us (last visited Apr. 19, 2017).

public about Blue Alerts.⁵⁷ Have states adopted these PSAs or other types of outreach to educate the public about Blue Alerts and appropriate responses to them? How often have Blue Alerts been activated and through what means or media have they been issued? How has the public reacted to Blue Alerts? In the past, the Commission has noted its concern that over-alerting or alerting to unaffected areas can lead to alert fatigue.⁵⁸ Has public response indicated that is the case in connection with Blue Alerts? We encourage commenters to provide examples of all available public responses to Blue Alerts that have been delivered since the adoption of the Blue Alert Act and DOJ's Blue Alert Guidelines.

17. *Timeframe.* We seek comment on the timeframe in which a dedicated Blue Alert EAS event code could be implemented. In the *NWS Report and Order*, the Commission required EAS equipment manufacturers to integrate the severe weather-related EAS event codes into equipment yet to be manufactured or sold, and to make necessary software upgrades available to EAS Participants, no later than six months from the effective date of the rules, reasoning that the prompt deployment of alerts using the new codes would be consistent with the safety of the public in affected areas.⁵⁹ We believe that adding a Blue Alert EAS event code would trigger similar technical and public safety requirements regarding equipment readiness. We therefore propose that EAS equipment manufacturers should integrate the Blue Alert event code into equipment yet to be manufactured or sold, and make necessary software upgrades available to EAS Participants, no later than six months from the effective date of the rules. We seek comment on this proposal.

18. With regard to EAS Participants, we note that in the NWS proceeding the Commission allowed EAS Participants to implement the new event codes on a voluntary basis until their equipment was replaced.⁶⁰ The Commission further noted that it has taken this approach when it has adopted other new EAS event codes in the past, and that the record did not reflect any basis to take a different approach.⁶¹ We therefore propose to take a similar approach here and would allow EAS Participants to upgrade their equipment (whether through new equipment that is programmed to contain the code or through implementing a software upgrade to install the code into equipment already in place) on a voluntary basis until such time as their equipment is replaced. We seek comment on our proposal. If commenters disagree with our analysis or proposed timeline, they should specify alternatives and the specific technical bases for such alternatives.

19. *Wireless Emergency Alerts.* We note that along with the EAS, a primary public alert warning system regulated by the Commission is Wireless Emergency Alerts (WEA), a system that allows wireless providers (participating CMRS Providers) to voluntarily deliver critical warnings and information to Americans through their wireless phones.⁶² In its 2017 Report to Congress, the COPS

⁵⁷ Blue Alert Foundation, *National Blue Alert System: Media/PSA's*, http://www.bluealert.us/media_psa_s (last visited Apr. 19, 2017).

⁵⁸ See *Wireless Emergency Alerts, Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-91, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11149-50, paras. 55-56 (2016) (discussing that over-alerting may lead to alert fatigue, which, in turn, may cause the public to ignore alert messages).

⁵⁹ *NWS Report and Order*, 31 FCC Rcd at 7926, para. 27.

⁶⁰ *NWS Report and Order*, 31 FCC Rcd at 7926, para. 27.

⁶¹ *NWS Report and Order*, 31 FCC Rcd at 7926, para. 27.

⁶² See 47 CFR § 10.10(d) (defining a CMS Provider); 47 CFR § 10.400 (setting forth WEA message requirements); *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11125-11130, paras. 16-25 (2016).

Office notes that many Americans depend on both the EAS and WEA for public alerts and warnings.⁶³ The COPS Office goes on to note its intent that Blue Alerts be delivered to the public over wireless devices as well as over the EAS.⁶⁴ We note that EAS event codes are not required by the Commission's rules for a WEA message to be processed,⁶⁵ but seek comment on whether the adoption of a dedicated EAS code for Blue Alerts would have any effect on WEA. For example, would the use of a Blue Alert EAS event code have any impact on how the IPAWS infrastructure and the networks of participating CMRS Providers would process a Blue Alert WEA?⁶⁶ To what extent, if any, have states used WEA to deliver Blue Alerts to the public? Have such WEA messages been initiated by the use of existing EAS event codes?

20. Would the adoption of a dedicated EAS event code help ensure that Blue Alerts issued over WEA are swiftly processed and delivered to the public? If we were to adopt a dedicated Blue Alert EAS event code, and the alert originator were to select "BLU" as the event code type, could this automatically prepopulate the WEA message—thereby saving critical seconds—with uniform language that might be applicable to all Blue Alerts (such as by automatically including alert message text saying "This is a Blue Alert for [area]")? We assume that WEA Blue Alerts would be classified as either an Imminent Threat Alert or the newly adopted Public Safety Message, depending on the circumstances.⁶⁷ We seek comment on this assumption, and ask whether alert initiators, Participating CMRS providers, or other WEA stakeholders believe it would be helpful to receive additional guidance or direction regarding how Blue Alerts should be classified for purposes of WEA. Are there other reasons adopting a dedicated EAS Blue Alert event code would facilitate or otherwise affect the delivery of Blue Alerts to the public over WEA?

21. *Costs and Benefits.* We seek comment on the total costs and benefits associated with the proposed addition of Blue Alerts to the EAS. For those states that have adopted State Blue Alert Plans, have Blue Alerts been effective in protecting law enforcement officers and/or apprehending criminals? Would a dedicated EAS code produce a more efficient result than utilizing an existing event code or alternate delivery mechanism?

22. In the background section of this *Notice*, we describe how AMBER Alerts are a voluntary partnership between law-enforcement agencies, broadcasters, transportation agencies, and the wireless industry to activate an urgent bulletin in the most serious child-abduction cases.⁶⁸ Would the adoption of a dedicated EAS event code help facilitate a similar partnership to promote the safety of law enforcement officers? Would Blue Alerts have a similar impact as AMBER Alerts? We seek comment on whether statistical information concerning AMBER Alerts is relevant to Blue Alerts. The DOJ reports that AMBER Alerts were directly responsible for recovering more than 25% of children reported missing in

⁶³ See 2017 Report to Congress at 8.

⁶⁴ See *Blue Alert FAQ* (noting that a dedicated EAS Blue Alert event code would "allow for promulgating of specific rules to ensure that Blue Alerts are handled in a specific manner by participating media outlets and wireless carriers").

⁶⁵ Under the Commission's part 10 WEA rules, alerts are limited to Presidential Alerts, Imminent Threat Alerts, and Child Abduction Emergency/AMBER Alerts. See 47 CFR § 10.400. To qualify as an Imminent Threat Alert, an alert must meet a minimum value for the three CAP elements of Urgency, Severity, and Certainty. See 47 CFR § 10.400(b).

⁶⁶ FEMA, *Integrated Public Alert & Warning System*, <https://www.fema.gov/integrated-public-alert-warning-system> (last visited May 4, 2017).

⁶⁷ See 47 CFR § 10.400(b); *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11125-11130, paras. 16-25 (2016).

⁶⁸ See *supra* note 7.

2015.⁶⁹ Is it reasonable to expect a similar success rate for EAS Blue Alerts? What is the expected reduction in time to find a lost or abducted child as a result of the introduction of the EAS Code for AMBER Alerts? Would a similar reduction of time occur with an EAS Blue Alert code?

23. We seek comment on whether introducing a dedicated EAS event code would help save the lives of law enforcement officers or the public. We observe that 135 law enforcement officials were killed in 2016.⁷⁰ The COPS Office argues that the EAS framework is a valuable resource that can “expedite information sharing and facilitate the quick apprehension of dangerous criminals who pose an immediate threat to law enforcement and communities they serve.”⁷¹ Would utilizing a dedicated event code facilitate faster information sharing and dissemination of information to the public? The COPS Office additionally argues that Blue Alerts can “provide instructions to keep innocent persons safe and information on what to do if a suspect is spotted.”⁷² Would a faster and more uniform means of disseminating Blue Alerts, such as through a dedicated EAS event code, save lives (whether directly as to law enforcement officials, or indirectly as to innocent bystanders that might be harmed by the same emergency)?⁷³

24. We seek comment on the benefits of a dedicated EAS Blue Alert code with respect to potentially providing an additional path of communication to others who may be best positioned to provide assistance, including off-duty public safety officials and the media. EAS Blue Alerts also could quickly provide the media with information that they can disseminate to the public. In this regard, could EAS Blue Alerts lower the amount of time that police forces devote to alerting the media, allowing more time for personnel to devote to responding to the emergency? We seek comment on this category of benefits and cost reductions.

25. We also seek comment on the costs of the proposed event code. In the *NWS Report and Order*, the Commission noted that the record indicated that the new severe weather-related codes could be implemented by EAS Participants via minimally burdensome and low-cost software downloads.⁷⁴ Is the

⁶⁹ Department of Justice, *Amber Alert America’s Missing: Broadcast Emergency Response* (Feb. 23, 2017), <https://www.amberalert.gov/statistics.htm>. According to DOJ statistics, 868 children have been rescued due to Amber Alerts. *Id.* In 2015 alone, 50 of the 153 recoveries were the direct result of Amber Alerts, constituting more than 25% of the recovered children reported missing that year. *Id.*

⁷⁰ See National Law Enforcement Officers Memorial Fund, *2016 Preliminary End-of-Year Law Enforcement Officer Fatalities Report* (Dec. 29, 2016), <http://www.nleomf.org/facts/research-bulletins/>.

⁷¹ *Blue Alert FAQ*.

⁷² *Blue Alert FAQ*.

⁷³ To quantify the life-saving value of the EAS, we assign a dollar value to reductions in the risk of losing human lives, referred to as the “Value of a Statistical Life” (VSL). See Memorandum from Molly J. Moran, Acting General Counsel, Department of Transportation, and Carlos Monje, Assistant Secretary for Transportation Policy, Office of the Secretary for Transportation, Guidance on Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses – 2016 Adjustment (Aug. 8, 2016), <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis> (Moran Memorandum). VSL describes “the additional cost that individuals would be willing to bear for improvements in safety (that is, reductions in risks) that, in the aggregate, reduce the expected number of fatalities by one.” See Moran Memorandum. We estimate that the dollar value of VSL in 2017 is approximately \$9.6 million. See Moran Memorandum.

⁷⁴ *NWS Report and Order*, 31 FCC Rcd at 7923, para. 22 (citing Letter from Michael Maginity, EAS Engineering Manager, Trilithic Inc. to Marlene H. Dortch, Secretary, FCC, EB Docket 04-296 (filed Feb. 6, 2015) (Trilithic *NWS Ex Parte* Letter); Letter from Ed Czarnecki, Senior Director of Strategic Development & Global Government Affairs for Monroe Electronics, Inc., to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296, at 1 (filed Feb. 13, 2015) (Monroe *NWS Ex Parte* Letter); Letter from Harold Price, President, Sage Alerting Systems, Inc., to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296, at 2 (filed Feb. 11, 2015) (Sage *NWS Ex Parte* Letter)).

(continued....)

same true for the proposed Blue Alert event code? In the record of the *NWS Report and Order*, Monroe Electronics indicated that the new severe weather-related event codes could be implemented in its device models through a software update downloaded from its website,⁷⁵ while Sage Alerting Systems indicated that end users could implement the proposed event codes in 10 minutes or less at no cost other than labor.⁷⁶ In the *NWS Report and Order*, the Commission expected total costs for the codes adopted in that order would not exceed the one-time \$3.5 million implementation cost ceiling.⁷⁷ We believe that adopting a Blue Alert EAS event code presents similar technical issues to those raised in the *NWS Order*. Accordingly, we believe that the same costs would apply to the adoption of a Blue Alert EAS event code as applied to the severe weather event codes adopted in the *NWS proceeding*, and tentatively conclude that the costs for adding a dedicated Blue Alert EAS event code would not exceed the one-time \$3.5 million implementation cost ceiling that the Commission expected in the *NWS Report and Order*. We seek comment on this analysis.

26. We believe \$3.5 million represents a conservative estimate because it assumes all 28,508 broadcasters and cable companies will spend the maximum of one hour downloading and installing a Blue Alert specific software update.⁷⁸ We note, however, that EAS Participants may choose not to add the Blue Alert event code until such time as they replace their equipment.⁷⁹ We also believe that the actual cost imposed will fall far below the \$3.5 million cost ceiling, because it is premised on the assumption that downloading the software updates will take one hour, whereas Sage estimated in the *NWS Report and Order* that a similar download and installation would take ten minutes.⁸⁰ Further, we see no reason why the Blue Alert event code could not be bundled with a general software upgrade that EAS Participants would otherwise install anyway, during the regular course of business. We tentatively conclude that the installation costs imposed on EAS Participants, together with the software update costs incurred by equipment manufacturers, would be far below the \$3.5 million ceiling estimated in the *NWS Report and Order*. We seek comment on our tentative conclusions. We also seek comment on the cost to EAS equipment manufacturers of creating software updates, testing these updates, supplying them to their customers, and providing any related customer support. We recognize that potential costs also may include management oversight software updates.

27. The COPS Office observes that a dedicated event code would convey the necessary sense of urgency and galvanize the public awareness necessary to protect law enforcement and the public from dangerous offenders, avoid utilizing existing codes which are used for mundane informational purposes, facilitate the adoption of new Blue Alert plans and integrate existing plans into a cohesive framework, and serve as a central and organizing element for Blue Alert plans nationally.⁸¹ We acknowledge DOJ's guidance and expertise as to the potential benefits of Blue Alerts, and combine that with our own analysis to support the tentative conclusion that the benefits of the proposed event code will outweigh its costs. We seek comment on this tentative conclusion.

⁷⁵ Monroe *NWS Ex Parte* Letter at 1.

⁷⁶ Sage *NWS Ex Parte* Letter at 1.

⁷⁷ See *NWS Report and Order*, 31 FCC Rcd at 7924, para. 23 (detailing that the \$3.5 million figure was arrived at by calculating \$125.00 per device (one hour of labor at OMB's approved labor cost estimate for an EAS Participant to fill out the Commission's online reporting form for EAS national tests) x 28,058 broadcasters and cable headends (EAS Participants). ($\$125.00 \times 28,058 = \$3,507,250.00$).

⁷⁸ See *NWS Report and Order*, 31 FCC Rcd at 7924, para. 23.

⁷⁹ See *NWS Report and Order*, 31 FCC Rcd at 7924, para. 23.

⁸⁰ Sage *NWS Ex Parte* Letter at 1.

⁸¹ *Blue Alert FAQ*.

28. Finally, are there costs or benefits that should be considered that are not captured in the above discussion? Are there alternative or additional approaches that could increase benefits and/or reduce costs? We seek comment on whether there are alternative or additional measures that the Commission could take to improve the introduction of Blue Alerts over the EAS, in order to promote the important public policy objective of protecting our nation's law enforcement officials.

IV. PROCEDURAL MATTERS

A. Ex Parte Rules

29. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁸² 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.

B. Comment Filing Procedures

30. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁸³

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- 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

⁸² 47 CFR §§ 1.1200-1.1216.

⁸³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

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.

31. 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 Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act of 1980,⁸⁴ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Notice of Proposed Rulemaking*, as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

D. Paperwork Reduction Analysis

33. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁸⁵

V. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED that pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this *Notice of Proposed Rulemaking* IS ADOPTED.

35. 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 Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

⁸⁴ See 5 U.S.C. § 604.

⁸⁵ See 44 U.S.C. § 3506(c)(4).

Marlene H. Dortch

Secretary

APPENDIX A

Proposed Rules

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

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

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

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

2. Amend § 11.31 by revising paragraphs (e) to read as follows:

§ 11.31 EAS protocol.

* * * * *

(e) The following Event (EEE) codes are presently authorized:

Nature of activation	Event codes
National Codes (Required):	
Emergency Action Notification (National only)	EAN.
National Information Center	NIC
National Periodic Test	NPT.
Required Monthly Test	RMT.
Required Weekly Test	RWT.
State and Local Codes (Optional):	
Administrative Message	ADR.
Avalanche Warning	AVW.
Avalanche Watch	AVA.

Blizzard Warning	BZW.
Blue Alert	BLU.
Child Abduction Emergency	CAE.
Civil Danger Warning	CDW.
Civil Emergency Message	CEM.
Coastal Flood Warning	CFW.
Coastal Flood Watch	CFA.
Dust Storm Warning	DSW.
Earthquake Warning	EQW.
Evacuation Immediate	EVI.
Extreme Wind Warning	EWW.
Fire Warning	FRW.
Flash Flood Warning	FFW.
Flash Flood Watch	FFA.
Flash Flood Statement	FFS.
Flood Warning	FLW.
Flood Watch	FLA.
Flood Statement	FLS.
Hazardous Materials Warning	HMW.
High Wind Warning	HWW.

High Wind Watch	HWA.
Hurricane Warning	HUW.
Hurricane Watch	HUA.
Hurricane Statement	HLS.
Law Enforcement Warning	LEW.
Local Area Emergency	LAE.
Network Message Notification	NMN.
911 Telephone Outage Emergency	TOE.
Nuclear Power Plant Warning	NUW.
Practice/Demo Warning	DMO.
Radiological Hazard Warning	RHW.
Severe Thunderstorm Warning	SVR.
Severe Thunderstorm Watch	SVA.
Severe Weather Statement	SVS.
Shelter in Place Warning	SPW
Special Marine Warning	SMW.
Special Weather Statement	SPS.
Storm Surge Watch	SSA.
Storm Surge Warning	SSW.
Tornado Warning	TOR.

Tornado Watch	TOA.
Tropical Storm Warning	TRW.
Tropical Storm Watch	TRA.
Tsunami Warning	TSW.
Tsunami Watch	TSA.
Volcano Warning	VOW.
Winter Storm Warning	WSW.
Winter Storm Watch	WSA.

APPENDIX B

Initial Regulatory Flexibility 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) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking*. 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 in the *Notice of Proposed Rulemaking*. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In this *Notice of Proposed Rulemaking*, the Commission proposes adding a new Emergency Alert System (EAS) Event Code, covering Blue Alerts (“Blue Alert Warning”). The Blue Alert Act charges the Community Oriented Policing Service (COPS Office) with identifying policies and procedures for disseminating Blue Alerts to the public that are effective, and can be implemented with no additional cost.⁴ Blue Alert carriage and use of the Blue Alert event code would be voluntary.⁵ In its 2016 Report to Congress, the COPS Office identified a dedicated EAS event code for Blue Alerts as a means of disseminating Blue Alerts to the public,⁶ and a necessary element to align the EAS with implementation of the Blue Alert Act overall.⁷ EAS Participants would be allowed to upgrade their equipment implementing the Blue Alert code (whether through new equipment that is programmed to contain the code, or through implementing a software upgrade to install the code into equipment already in place) on a voluntary basis until such time as their equipment is replaced. In this *Notice of Proposed Rulemaking*, we seek comment on whether adding a “Blue Alert” code to the EAS would serve the public interest by furthering the goal of the Blue Alert Act by disseminating information to the public that protects law enforcement officials and the public at large.

B. Legal Basis

3. Authority for the actions proposed in this *Notice of Proposed Rulemaking* may be found in sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the

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 *Id.*

⁴ 42 U.S.C. § 14165b (b)(7)(1)-(2).

⁵ See, e.g., 47 CFR § 11.55(a) (“The EAS may be activated at the State and Local Area levels by EAS Participants at their discretion for day-to-day emergency situations posing a threat to life and property.”); 47 CFR § 11.52(d)(5) (“[T]he management of EAS Participants shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.”); see also *First Report and Order and Further Notice of Proposed Rule Making*, 20 FCC Rcd at 18628, para. 8.

⁶ United States Department of Justice Office of Community Oriented Policing Services, *Rafael Ramos and Wenjian Liu National Blue Alert Report to Congress* at 6 (2016). “. . .the need for a dedicated Emergency Alert System (EAS) event code . . .”

⁷ See United States Department of Justice Office of Community Oriented Policing Services, *Rafael Ramos and Wenjian Liu National Blue Alert Report to Congress* at 8 (2016).

Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we describe and estimate the number of small entity licensees that may be affected by the adopted rules.

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general, a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 28.8 million businesses.¹⁰ Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.¹² Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹³ U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.¹⁴ We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”¹⁵ Thus, we estimate that most governmental jurisdictions are small.

⁸ See 5 U.S.C. §§ 601(3)–(6).

⁹ See SBA, Office of Advocacy, *Frequently Asked Questions, Question 1 – What is a small business?* (June 2016), https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

¹⁰ See SBA, Office of Advocacy, *Frequently Asked Questions, Question 2- How many small business are there in the U.S.?* (June 2016), https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹¹ 5 U.S.C. § 601(4).

¹² Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

¹³ 5 U.S.C. § 601(5).

¹⁴ U.S. Census Bureau, *Statistical Abstract of the United States: 2012* at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

¹⁵ The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*, <http://www.census.gov/popest/data/cities/totals/2011/index.html> (last visited May 4, 2017). By subtracting the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

(continued....)

6. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station's own studio, from an affiliated network, or from external sources.¹⁶ The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.¹⁷ U.S. Census Bureau data for 2012 shows that 2,849 radio station firms operated during that year.¹⁸ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.¹⁹ Therefore, based on the SBA's size standard, the majority of such entities are small entities.

7. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of June 2, 2016, about 11,386 (or about 99.9 percent) of 11,395 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,415.²⁰ We note that the Commission also has estimated the number of licensed NCE radio stations to be 4,101.²¹ Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. We also note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.²² The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation.²³ We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis; thus, our estimate of small businesses may be over-inclusive.

9. *FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.²⁴ This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studios, from an affiliated network, or from external sources.²⁵ The SBA has established a small business

¹⁶ U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2012 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2012%20NAICS%20Search).

¹⁷ 13 CFR § 121.201, NAICS code 515112 Radio Stations.

¹⁸ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹⁹ *Id.*

²⁰ *Broadcast Station Totals as of December 31, 2016*, Press Release (MB, rel. January 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016> (January 5, 2017 *Broadcast Station Totals Press Release*).

²¹ *Id.*

²² "[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 power to control both." 13 CFR § 121.103(a)(1).

²³ 13 CFR § 121.102(b).

²⁴ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2012>.

²⁵ *Id.*

(continued....)

size standard which consists of all radio stations whose annual receipts are \$38.5 million dollars or less.²⁶ U.S. Census data for 2012 indicate that 2,849 radio station firms operated during that year.²⁷ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.²⁸ Based on U.S. Census Bureau data, we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

10. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”²⁹ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.³⁰ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which, in turn, broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.³¹ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999, and 70 had annual receipts of \$50,000,000 or more.³² Based on this data, we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

11. The Commission has estimated the number of licensed commercial television stations to be 1,384.³³ Of this total, 1,264 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and, therefore, these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.³⁴ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

²⁶ 13 CFR § 121.201.

²⁷ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

²⁸ *Id.*

²⁹ U.S. Census Bureau, *2012 NAICS Definitions, 515120 Television Broadcasting*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017> (last visited May 4, 2017).

³⁰ *Id.*

³¹ 13 CFR § 121.201; 2012 NAICS code 515120.

³² U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table (last visited May 4, 2017).

³³ *Broadcast Station Totals as of December 31, 2016*, Press Release (MB, rel. January 5, 2017), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016> (January 5, 2017 Broadcast Station Totals Press Release).

³⁴ *Id.*

12. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³⁵ 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, another element of the definition of “small business” requires that an 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 broadcast 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 therefore is possibly over-inclusive.³⁶

13. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). 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. The SBA size standard for this industry establishes as small any company in this category which receives annual receipts of \$38.5 million or less.³⁷ Based on U.S. Census data for 2012, in that year 725 establishments operated for the entire year. Of that number, 488 operated with annual receipts of \$10 million a year or less and 237 establishments operated with annual receipts of \$10 million or more. Based on this data, the Commission estimates that the majority of establishments operating in this industry are small.³⁸

14. *Cable System Operators (Rate Regulation Standard).* The Commission has 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.³⁹ Industry data indicate that there are currently 4,600 active cable systems in the United States.⁴⁰ Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.⁴¹ In addition, under the Commission's rate regulation rules, a “small system” is a cable system serving 15,000 or fewer

³⁵ “[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 the power to control both.” 13 CFR§ 21.103(a)(1).

³⁶ There are also 2,344 LPTV stations, including Class A stations, and 3689 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

³⁷ See 13 CFR § 121.201, NAICS Code 515210.

³⁸ American Fact Finder, United States Census Bureau, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table (last visited Mar. 16, 2015).

³⁹ 47 CFR § 76.901(e).

⁴⁰ Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission’s Cable Operations and Licensing System (COALS), www.fcc.gov/coals).

⁴¹ See SNL KAGAN at <https://www.snl.com/interactiveX/MyInteractive.aspx?mode=4&CDID=A-821-38606&KLPT=8> (subscription required).

subscribers.⁴² Current Commission records show 4,600 cable systems nationwide.⁴³ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁴⁴ Thus, under this standard as well, we estimate that most cable systems are small entities.

15. *Cable System Operators (Telecom Act Standard)*. 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 one 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 are approximately 52,403,705 cable video subscribers in the United States today.⁴⁵ Accordingly, an operator serving fewer than 524,037 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.⁴⁶ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁴⁷ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁴⁸ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Custom Computer Programming Services*. This industry is comprised of establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.⁴⁹ The SBA has developed a small business size standard for this category, which is annual gross receipts of \$27.5 million or less.⁵⁰ According to data from the 2012 U.S. Census, there were 47,918 establishments engaged in this business in 2012. Of these, 45,786 had annual gross receipts of less than \$10,000,000. Another 2,132 establishments had gross receipts of \$10,000,000 or more.⁵¹ Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

17. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these

⁴² 47 CFR § 76.901(c).

⁴³ See *supra* note 46.

⁴⁴ *Id.*

⁴⁵ See SNL KAGAN at www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx. (Aug. 2016).

⁴⁶ 47 CFR § 76.901(f).

⁴⁷ *Assessment & Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, 31 FCC Rcd 5757, Appendix E para. 23 (2016).

⁴⁸ 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).

⁴⁹ See

<https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.541511#>.

⁵⁰ 13 CFR § 121.201

⁵¹ See

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_54SSSZ1&prodType=table.

(continued....)

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.⁵² The Small Business Administration has established a size standard for this industry of 1,250 or fewer employees.⁵³ U.S. Census data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.⁵⁴ Based on this data, we conclude that a majority of manufacturers in this industry are small.

18. *Satellite Telecommunications.* This category comprises firms “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.”⁵⁵ The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁵⁶ For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year.⁵⁷ Of this total, 299 firms had annual receipts of less than \$25 million.⁵⁸ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

19. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only.⁵⁹ The SBA has established a size standard for this industry of annual receipts of \$38.5 million per year.⁶⁰ U.S. Census data for 2012 indicates that 5,079 firms operated in that year. Of that number, 4,697 firms had annual receipts of \$25 million or less.⁶¹ Based on that data, we conclude that a majority of firms in this industry are small.

20. *All Other Telecommunications Providers.* The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station

⁵² <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>

⁵³ 13 CFR § 121.201, NAICS Code 334220

⁵⁴

http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table

⁵⁵ U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>

⁵⁶ 13 CFR § 121.201, NAICS code 517410.

⁵⁷ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table

⁵⁸ *Id.*

⁵⁹ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁰ 13 CFR § 121.201.

⁶¹ *See*

http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁶² The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁶³ For this category, U.S. Census data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁶⁴ Thus, a majority of “All Other Telecommunications” firms potentially affected by the rules adopted can be considered small.

21. *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)).⁶⁵

22. *BRS.* 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.⁶⁶ 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.⁶⁷ 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.

23. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁶⁸ 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

⁶² <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶³ 13 CFR § 121.201; NAICS Code 517919.

⁶⁴ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?_afPid=ECN_2012_US_51SSSZ4&prodType=table.

⁶⁵ *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*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

⁶⁶ 47 CFR § 21.961(b)(1).

⁶⁷ 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 1500 or fewer employees.

⁶⁸ *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).

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.⁶⁹ Auction 86 concluded in 2009 with the sale of 61 licenses.⁷⁰ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

24. *EBS.* The SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.⁷¹ Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers. Wired Telecommunications Carriers are comprised of 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.⁷² 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.⁷³ The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's internal records indicate that as of September 2014, there are 2,207 active EBS licenses.⁷⁴ The Commission estimates that of these 2,207 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁷⁵

25. *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 is now included in SBA's economic census category "Wired Telecommunications Carriers." The Wired Telecommunications Carriers 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

⁶⁹ *Id.* at 8296, para. 73.

⁷⁰ *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).*

⁷¹ The term "small entity" within SBREFA applies to small organizations (nonprofits) 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). We do not collect annual revenue data on EBS licensees.

⁷² U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012>.

⁷³ *Id.* Examples of this category are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. 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.⁷⁶ The SBA determines that a wireline business is small if it has fewer than 1500 employees.⁷⁷ U.S. Census data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁷⁸ Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.⁷⁹ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

26. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. 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.”⁸⁰ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁸¹ U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁸² Thus, under this size standard, the majority of firms in this industry can be considered small.

27. *Wireless Communications Service.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction.⁸³ A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small

⁷⁶ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012>.

⁷⁷ 13 CFR § 121.201, NAICS CODE 517110.

⁷⁸

http://factfinder.census.gov/faces/tableservices.jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

⁷⁹ See 15th Annual Video Competition Report, 28 FCC Rcd at 1057, Section 27.

⁸⁰ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸¹ See 13 CFR § 120.201, NAICS Code 517110.

⁸²

http://factfinder.census.gov/faces/tableservices.jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁸³ *Auction of Wireless Communications Services, Auction Notes and Filing Requirements for 128 WCS Licenses Scheduled for April 15, 1997*, Public Notice, DA 97-386 (Feb. 21, 1997), https://transition.fcc.gov/Bureaus/Wireless/Public_Notices/1997/da970386.txt.

business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.⁸⁴ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

28. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁸⁵ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁸⁶ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁸⁷ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁸⁸ Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

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

29. None.

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

30. The RFA requires an agency to describe any significant, specifically small business 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) and exemption from coverage of the rule, or any part thereof, for small entities.”⁸⁹

31. The rule changes contemplated by the *Notice of Proposed Rulemaking* would implement certain EAS warning codes that are unique, and implemented by small entity and larger-sized regulated entities on a voluntary basis until such time the EAS Participant replaces its equipment. The costs to EAS Participants associated with implementing the codes contained in the proposed rule changes are expected to be *de minimis* and limited to the cost of labor for downloading software updates, to the extent any updates are required at all. Nevertheless, we have invited comment on the costs associated with implementation of the proposed Blue Alert code in order to more fully understand the impact of the proposed action and assess whether any action is needed to assist small entities. Similarly, while we believe that the costs incurred by equipment manufacturers to write a few lines of code to implement the Blue Alert code will be minimal, we have also invited comments on the cost to EAS equipment manufacturers of creating software updates, testing these updates, supplying them to their customers, and

⁸⁴ *Alvarez Letter*.

⁸⁵ NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

⁸⁶ 13 CFR § 121.201, NAICS code 517210.

⁸⁷ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

⁸⁸ *Id.* 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.”

⁸⁹ 5 U.S.C. §§ 603(c)(1)-(c)(4).

providing any related customer support. Additionally, we have invited Commenters to propose steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose significant alternatives that serve the goals of these proposals.

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

32. None.