

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 the Emergency Alert System )

NOTICE OF PROPOSED RULEMAKING

Adopted: July 8, 2015

Released: July 10, 2015

Comment Date: (30 days from the date of publication in the Federal Register)
Reply Comment Date: (45 days from the date of publication in the Federal Register)

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 2
III. DISCUSSION ..... 4
A. Proposed EAS Event Codes..... 4
B. Proposed Geographic Location Code Revisions..... 13
C. Implementation Schedule..... 17
IV. PROCEDURAL MATTERS..... 19
A. Ex Parte Rules..... 19
B. Comment Filing Procedures ..... 20
C. Regulatory Flexibility Analysis ..... 22
D. Paperwork Reduction Analysis..... 23
V. ORDERING CLAUSES..... 24
APPENDIX A – Proposed Rules
APPENDIX B – Initial Regulatory Flexibility Analysis

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) rules, as set forth in a letter and subsequent comments filed by the National Weather Service (NWS) of the National Oceanic and Atmospheric Administration (NOAA). Specifically, NWS requests that the Commission

1 47 C.F.R. §§ 11.1 et. seq.

2 See Letter from David B. Caldwell, Director, Office of Climate, Water, and Weather Services, National Weather Service, NOAA, EB Docket No. 04-296 (filed Aug. 4, 2011) (NWS 2011 Request). NWS renewed its 2011 request and added a request to adopt the storm surge event codes in November 2013. See Letter from Christopher S. Strager, Acting Director, Office of Climate, Water, and Weather Services, National Weather Service, NOAA, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed Nov. 15, 2013) (NWS Consolidated Request). NWS subsequently renewed and supplemented its requests on August 15, 2013, in three separate comment filings. See National Weather Service, Comments, EB Docket No. 04-296 (all three filed separately on Nov. 15, 2013) (NWS 2013 Comments). NWS filed a more extensive description of the need for its requested revisions in 2014.

(continued...)

add three new EAS event codes, covering extreme wind and storm surges, as well as revise the territorial boundaries of the geographic location codes for two offshore marine areas listed in the EAS rules as location codes 75 and 77.<sup>3</sup> We agree with NWS that targeted, specific warnings “will help the public and emergency officials better respond to local threat(s).”<sup>4</sup>

## II. BACKGROUND

2. The EAS is a national public warning system through which broadcasters, cable systems, and other service providers (EAS Participants)<sup>5</sup> deliver alerts to the public to warn them of impending emergencies and dangers to life and property.<sup>6</sup> The primary purpose of the EAS is to provide the President with “the capability to provide immediate communications and information to the general public at the national, state and local levels during periods of national emergency.”<sup>7</sup> The EAS also is used by state and local governments, as well as NWS, to distribute alerts.<sup>8</sup> According to NWS, about 90 percent of all EAS activations are generated by NWS and relate to short-term weather events.<sup>9</sup> The Commission, the Federal Emergency Management Agency (FEMA), and the NWS implement the EAS at the federal level.<sup>10</sup> The EAS is a broadcast-based, hierarchical alert message distribution system through

(Continued from previous page) \_\_\_\_\_

See National Weather Service, Comments, EB Docket No. 04-296 (all three filed separately on Aug. 15, 2014) (*NWS 2014 Comments 1, 2, and 3*).

<sup>3</sup> See NWS 2013 Comments at 1.

<sup>4</sup> *NWS Consolidated Request* at Attachment B.

<sup>5</sup> The Commission’s rules define EAS Participants as radio broadcast stations, including AM, FM, and low-power FM stations; Class A television and low-power TV stations; cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. See 47 C.F.R. § 11.11(a).

<sup>6</sup> 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, *Fifth Report and Order*, 27 FCC Rcd 642, 646, para. 6 (2012) (*Fifth Report and Order*). A more detailed history of the EAS is summarized in the *First Notice of Proposed Rulemaking* in this docket. See Review of the Emergency Alert System, EB Docket No. 04-296, *Notice of Proposed Rulemaking*, 19 FCC Rcd 15775, 15776-77, paras. 6-8. In addition, 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, *Second Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

<sup>7</sup> 47 C.F.R. § 11.1. National activation of the EAS for a Presidential alert message is initiated by the transmission of an Emergency Action Notification (EAN) event code and is designed to provide the President the capability to transmit an alert message (in particular, an audio alert message) to the public within ten minutes from any location at any time. The EAN must take priority over any other alert message and preempt other alert messages in progress. See, e.g., Review of the Emergency Alert System, EB Docket No. 04-296, *First Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 18625, 18628, para. 8 (2005) (*First Report and Order and Further Notice of Proposed Rulemaking*). See also, e.g., 47 C.F.R. §§ 11.33(a)(11), 11.51(m), (n).

<sup>8</sup> EAS Participants are required to broadcast Presidential alerts; they participate in broadcasting state and local EAS alerts on a voluntary basis. See 47 C.F.R. § 11.55(a). See also *First Report and Order and Further Notice of Proposed Rule Making*, 20 FCC Rcd at 18628, para. 8.

<sup>9</sup> See NWS Fact Sheet, “NOAA’s National Weather Service (NWS) and the Emergency Alert System” (Jan. 2014), available at [http://www.nws.noaa.gov/os/dissemination/EAS\\_factsheet.pdf](http://www.nws.noaa.gov/os/dissemination/EAS_factsheet.pdf).

<sup>10</sup> The respective roles of the Commission, FEMA, and NWS are defined in a series of Executive documents. See 1981 State and Local Emergency Broadcasting System (EBS) Memorandum of Understanding Among the Federal Emergency Management Agency (FEMA), Federal Communications Commission (FCC), the National Oceanic and Atmospheric Administration (NOAA), and the National Industry Advisory Committee (NIAC), reprinted as

(continued...)

which an alert message originator at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol, which provides basic information about the emergency involved.<sup>11</sup> The message is then broadcast by one or more EAS Participants and subsequently relayed from one station to another until all affected EAS Participants have received the alert and delivered it to the public.<sup>12</sup> This process of EAS alert distribution among EAS Participants is often referred as the “daisy chain” distribution architecture.<sup>13</sup>

3. The EAS Protocol utilizes fixed codes to identify various aspects of the alert. Of particular relevance to this *Notice*, the EAS Protocol utilizes a three-character “event code” to describe the nature of the alert (*e.g.*, “TOR” signifies tornado).<sup>14</sup> The EAS Protocol identifies “National” event codes, such as the EAN and National Periodic Test (NPT), which EAS Participants use as part of required Presidential alerts and tests, and “State and Local” event codes, such as TOR, which EAS Participants use when they deliver weather and other voluntary alerts.<sup>15</sup> In addition, the EAS Protocol utilizes six-digit numerical location codes to identify the geographic area(s) to which the alert applies, two digits of which, the “SS” codes, indicate the state, territory, or, in this case, the offshore marine area to which the alert applies.<sup>16</sup> Unlike the state and territory geographic location codes, which are based on the American National Standards Institute (ANSI) standard,<sup>17</sup> the codes assigned to the offshore marine areas were created by the NWS and adopted by the Commission in 2002 at NWS’s request.<sup>18</sup>

(Continued from previous page)

Appendix K to Partnership for Public Warning Report 2004-1, The Emergency Alert System (EAS): An Assessment; Assignment of National Security and Emergency Preparedness Telecommunications Functions, Exec. Order No. 12472, 49 Fed. Reg. 13471 (1984); Memorandum, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995).

<sup>11</sup> See 47 C.F.R. § 11.31. Under this protocol, an EAS alert uses a four-part message: (1) preamble and EAS header codes (which contain information regarding the identity of the sender, the type of emergency, its location, and the valid time period of the alert); (2) audio attention signal; (3) audio message, if included by the alert originator; and (4) preamble and “end of message” (EOM) codes. See *id.* § 11.31(a). Although the EAS Protocol specifies that the message can be audio, video, or text, in practice, only audio is sent.

<sup>12</sup> The EAS Protocol is identical to the Specific Area Message Encoding (SAME) digital protocol used by NWS for weather alerts. See 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, *Third Further Notice of Proposed Rulemaking*, 26 FCC Rcd 8149, 8154, para. 5 (2011). Accordingly, in this *Notice of Proposed Rulemaking* we use “EAS Protocol” and “SAME” interchangeably when referring to the protocols used for over-the-air EAS transmission.

<sup>13</sup> At the national level, EAS message distribution starts at Primary Entry Point (PEP) stations, which are a group of geographically diverse, high-power radio stations designated and tasked by FEMA to transmit “Presidential Level” messages initiated by FEMA. See *Fifth Report and Order*, 27 FCC Rcd at 646-47, para. 7. At the state level, state governors and state and local emergency operations managers activate the EAS by utilizing state-designated EAS entry points – specifically, State Primary stations and “State Relay” stations. See 47 C.F.R. § 11.20. State Relay stations relay both national and state emergency messages to local areas. See 47 C.F.R. § 11.18(d).

<sup>14</sup> See 47 C.F.R. § 11.31(c), (e).

<sup>15</sup> See 47 C.F.R. § 11.31(e).

<sup>16</sup> See 47 C.F.R. § 11.31(c), (f).

<sup>17</sup> ANSI INCITS 31.2009 (“Information Technology – Identification of Counties and Equivalent Entities of the United States, its Possessions, and Insular Areas”). See 47 C.F.R. § 11.31(c).

<sup>18</sup> See Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, EB Docket No. 01-66, *Report and Order*, 17 FCC Rcd 4055, 4070, para. 36 (2002) (*2002 Report and Order*). See also Letter from Timothy J. Schott, Meteorologist, Office of Climate, Water, and Weather Services, National Weather Service, NOAA, EB Docket No. 04-296 (filed February 19, 2015) (*NWS Ex Parte*).

### III. DISCUSSION

#### A. Proposed EAS Event Codes

4. NWS requests that the Commission add a new “Extreme Wind Warning” (EWW) event code to provide the public with advance notice of the onset of extreme sustained surface winds (greater than or equal to 115 miles per hour) associated with a major land-falling hurricane (category 3 or higher).<sup>19</sup> NWS explains that use of the “Tornado Warning” (TOR) event code, then the only available code to warn of high winds, caused confusion when used to warn of Hurricane Charley’s high winds in 2004.<sup>20</sup> NWS states that although it started using the EWW code during the 2007 hurricane season, EAS Participants are “reluctant to add and relay the new [e]vent [c]ode via the EAS, fearing FCC adverse action without addition of the new EWW Event Code to the Part 11.”<sup>21</sup> According to NWS, no other existing EAS event code is adequate or acceptable to activate the EAS for an extreme wind warning.<sup>22</sup> Although section 11.31 of the rules contains other codes regarding hurricanes (*i.e.*, HUW for Hurricane Warning, HUA for Hurricane Watch, and HLS for Hurricane Statement),<sup>23</sup> those codes apply generally to the hurricane event itself, and are not specifically tailored to warn of extreme sustained surface winds associated with a (Category 3) hurricane.<sup>24</sup>

5. NWS also requests that the Commission add two new event codes covering storm surges: “Storm Surge Watch” (SSA) and “Storm Surge Warning” (SSW). NWS indicates that the “Storm Surge Watch/Warning will be issued when there is a significant risk of life-threatening inundation from rising water moving inland from the ocean.”<sup>25</sup> In the event of a storm surge, a watch (SSA) would be issued 48 hours in advance of the event taking place and a warning (SSW) would be issued 36 hours in advance of the event, and will help to mitigate damage from storm surge, the leading cause of death in tropical cyclones.<sup>26</sup>

6. In support of its request, NWS notes that it currently does not explicitly issue warnings for storm surge,<sup>27</sup> notwithstanding that the National Hurricane Center (NHC) has vigorously advocated for a storm surge watch and storm surge warning for a number of years.<sup>28</sup> The NWS explains that, according to the NHC, “storm surge losses in the hundreds or thousands of lives have occurred in every coastal state from Texas to South Carolina, and in some states north of there.”<sup>29</sup> NWS explains that “[w]hile the threatening winds of a hurricane are important, most deaths from tropical cyclones result from storm surge.”<sup>30</sup> NWS further explains that “current Hurricane Watch/Warning does not provide clear or sufficient information to allow citizens to determine if they are threatened by wind or storm surge

---

<sup>19</sup> *NWS 2011 Request* at 1-2.

<sup>20</sup> *See id.* at 3.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *See id.* at 3.

<sup>23</sup> 47 C.F.R. § 11.31. As discussed below, we agree with NWS that adding the proposed codes will increase the utility of the EAS alerts by providing the public with more specificity regarding the nature of the emergency at issue. *See infra* para. 9.

<sup>24</sup> *See, e.g.*, HURRICANE PREPAREDNESS - WATCHES & WARNINGS, NATIONAL WEATHER SERVICE, NATIONAL HURRICANE CENTER, <http://www.nhc.noaa.gov/prepare/wwa.php> (last visited May 1, 2015).

<sup>25</sup> *NWS 2011 Request* at Attachment B.

<sup>26</sup> *See NWS Consolidated Request* at Attachment B.

<sup>27</sup> *See id.*

<sup>28</sup> *See id.*

<sup>29</sup> *See NWS Consolidated Request* at 2.

<sup>30</sup> *See id.* at Attachment B.

or both.”<sup>31</sup> NWS notes that issuing storm surge watch/warning conditions is supported by both the NHC and FEMA,<sup>32</sup> and that storm surge warnings are utilized by the government meteorological services of other nations, such as Environment Canada, and that use of such warnings has been advocated by the World Meteorological Organization for member nations.<sup>33</sup> Accordingly, the NWS requests that the Commission revise its EAS rules to add Storm Surge Watch and Warning codes so that the NWS may offer these alerts to the public.

7. We propose adding both the extreme wind warning and storm surge event codes to section 11.31(e) of the Commission’s rules, thus authorizing their use by EAS Participants. As discussed in greater detail below, we believe that extreme wind and storm surge events pose significant dangers to human health and property, dangers that the Commission’s current EAS rules are not designed to prevent. Absent a revision of our EAS rules to allow the NWS to warn the public of these events, we risk unnecessary harm to the public, a risk inconsistent with our statutory mandate of “promoting the safety of life and property through the use of wire and radio communication.”<sup>34</sup> We thus tentatively conclude that the event codes NWS proposes could promote public safety by saving lives and reducing the potential for injuries and damage to property. We seek comment on this tentative conclusion.

8. On a more granular level, we seek comment on whether the addition of the EWW, SSA, and SSW event codes would promote the public interest by enabling the public to deal more effectively with emergency situations, and, if so, how the specificity added by use of the codes would assist the public in these regards. We observe that the NWS previously documented the confusion associated with using the TOR event code for non-tornados in its *Service Assessment* of the response to Hurricane Katrina.<sup>35</sup> According to the *Service Assessment*, use of the TOR event code for events other than tornados also can lead to inconsistent or incorrect advice. The standard advice associated with the TOR event code directs people to take shelter in “an interior room of the lowest floor” of a building,<sup>36</sup> but during Hurricane Katrina, the TOR warnings were issued for counties at risk for storm surge flooding. Local alerts originating in Miami describing the potential flooding hazard directed people “to go to the highest floor of a building.”<sup>37</sup> We seek comment on whether the addition of these weather-related event codes will address the potential for confusion or incorrect guidance that might otherwise result from the continued use of the TOR event code.

9. We also seek comment regarding the extent to which these new event codes will help promote safety of life and property. With respect to Hurricane Katrina, for example, NWS states that “[a]t least [1,500] people lost their lives during Katrina, and many of those deaths occurred because of storm surge, either directly or indirectly.”<sup>38</sup> In addition, NWS states that “Katrina also caused well over

---

<sup>31</sup> *Id.*

<sup>32</sup> *See id.*

<sup>33</sup> *See id.*

<sup>34</sup> 47 U.S.C. §1.

<sup>35</sup> David L. Johnson, Brigadier General, USAF (ret.), Assistant Administrator for Weather Services, *Service Assessment: Hurricane Katrina*, NOAA, 22-23 (2006) (“*Service Assessment*”), available at <http://www.nws.noaa.gov/os/assessments/pdfs/Katrina.pdf>. In one instance, a TOR event code was issued for an actual tornado north of Meridian, while at the same time, a TOR event code was issued for destructive winds associated with an extreme tropical cyclone south of Meridian. According to the NWS, using one code for two different events made it difficult for broadcasters to display and explain the difference between the two events. *See id.* at 22.

<sup>36</sup> *See id.* at 22-23.

<sup>37</sup> *Id.* at 23.

<sup>38</sup> STORM SURGE AND COASTAL INUNDATION, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <http://www.stormsurge.noaa.gov> (last visited May 1, 2015). *See also* STORM SURGE AND OVERVIEW, NATIONAL WEATHER SERVICE, NATIONAL HURRICANE CENTER, <http://www.nhc.noaa.gov/surge/> (last visited May 1, 2015).

\$100 billion in damage from its surge and winds.”<sup>39</sup> We also note that a recent analysis of data from Atlantic tropical cyclones occurring from 1963-2012 indicates that 49 percent of all deaths directly attributable to those events were caused by storm surge.<sup>40</sup> Further, storm surge damage is not limited to coastal areas. According to NHC data, for example, the storm surge (measured as water height above normal astronomical tide level) experienced in New York State during Hurricane Sandy reached 9.4 feet in the Battery on the southern tip of Manhattan,<sup>41</sup> and caused (with some contribution from rainfall) significant flooding in parts of the Hudson River Valley as far north as Albany (located approximately 130 miles from Manhattan).<sup>42</sup> Moreover, data suggests that storm surges may become more severe over time. The National Center for Atmospheric Research indicates that an increase to the global average temperature would result in “increasingly dramatic storm surges that, combined with higher water levels, [would] increase risk of damage to coastal infrastructure, society, and economies.”<sup>43</sup> We believe that the addition of EWW, SSA and SSW to the event codes in Section 11.31(e) of the rules would serve the public interest by providing more specific information regarding the emergency event. We seek comment on this analysis. We observe that NWS indicates that broadcasters, emergency management offices and federal agencies support the need to establish specific EAS warning alerts for these conditions, and we invite these entities in particular to submit their updated views on these issues.<sup>44</sup>

10. We also seek comment on the costs for implementing the proposed event codes. NWS states that the additional costs associated with the addition of these new event codes will be minimal and can generally be added through a firmware and/or software update.<sup>45</sup> Several EAS equipment manufacturers confirm NWS’s contentions. Trilithic Inc. (Trilithic), for example, states that, for its two EAS encoder/decoder models currently deployed in the field, the event codes can be added through a

---

<sup>39</sup> STORM SURGE AND COASTAL INUNDATION, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <http://www.stormsurge.noaa.gov> (last visited May 1, 2015).

<sup>40</sup> See Edward N. Rappaport, *Fatalities in the United States from Atlantic Tropical Cyclones: New Data and Interpretation*, VOL. 95, BULLETIN OF THE AMERICAN METEOROLOGICAL SOCIETY, ISSUE 3, 341-346, 341 (2014), available at <http://journals.ametsoc.org/doi/pdf/10.1175/BAMS-D-12-00074.1>.

<sup>41</sup> See Eric S. Blake, Todd B. Kimberlain, Robert J. Berg, John P. Cangialosi and John L. Beven II, *Tropical Cyclone Report: Hurricane Sandy (AL182012), 22 – 29 October 2012*, NATIONAL HURRICANE CENTER, at Table 5 (2013), [http://www.nhc.noaa.gov/data/tcr/AL182012\\_Sandy.pdf](http://www.nhc.noaa.gov/data/tcr/AL182012_Sandy.pdf) (*Tropical Cyclone Report: Hurricane Sandy*). The storm surge observed at The Battery in New York City has been reported as high as 13.88 feet. See, e.g., Alan Duke, *Superstorm Sandy Breaks Records*, CNN (Oct. 31, 2012), <http://www.cnn.com/2012/10/30/us/sandy-records/index.html>; *Superstorm Sandy Slams East Coast with 80mph Winds and Unprecedented 13-foot Surge of Seawater*, THE DAILY NEWS (Oct. 31, 2012, 3:15 AM), <http://www.nydailynews.com/new-york/superstorm-sandy-slams-east-coast-article-1.1194957>.

<sup>42</sup> See *Tropical Cyclone Report: Hurricane Sandy* at 9.

<sup>43</sup> EVALUATING THE EFFECTS OF FUTURE SEA LEVEL RISE AND STORM SURGES ALONG U.S. COASTLINES, NATIONAL CENTER FOR ATMOSPHERIC RESEARCH, <http://ncar.ucar.edu/press/evaluating-the-effects-of-future-sea-level-rise-and-storm-surges-along-us-coastlines> (last visited May 1, 2015).

<sup>44</sup> See, e.g., *NWS Consolidated Request* at Attachment B (Stating, with respect to surveys NWS conducted on the utility of using a storm surge event code, that “92% of the public in a survey agreed the NWS should issue a separate storm surge warning for hurricanes or severe coastal flooding events[,] ... 75% of emergency managers in a survey agreed the NWS should issue a separate storm surge warning[, and] 95% of broadcast meteorologists in a survey agreed the NWS should issue a separate storm surge.”).

<sup>45</sup> See *NWS Consolidated Request* at Attachment A (stating that “The NWS contacted three manufacturers of EAS encoders and decoders,” who “indicate the [EWW] Event Code can easily be added to most current platforms through a simple software update,” and “[f]or older platforms and legacy equipment which they continue to support, the new codes can usually be added through a firmware and/or software update, which may involve a nominal cost”). See also *id.* at Attachment B (“The NWS contacted three manufacturers of EAS encoders and decoders. They indicate the [SSA and SSW] Event Code[s] can easily be added to most current platforms through a simple software update.”).

software update, adding that “[t]he modifications are minimal and there would be no cost passed onto our customers.”<sup>46</sup> Monroe Electronics, Inc. (Monroe), states that the event codes could be implemented in its EAS device models through a software update, “downloaded by users from Monroe’s secure site, and applied to each EAS device by the user, with basic instructions provided by Monroe or its Digital Alert Systems subsidiary.”<sup>47</sup> Similarly, Sage Alerting Systems, Inc. (Sage), states that end users could implement the proposed event codes by downloading a settings file.<sup>48</sup> We tentatively conclude that the costs for implementing the proposed event codes will be nominal to manufacturers and either nominal or non-existent for EAS participants. We seek comment on this tentative conclusion and the costs for individual EAS Participants.

11. We note that Sage observes that one of its EAS device models in the field can no longer support software updates and, therefore, presumably cannot be updated with the proposed event codes.<sup>49</sup> We seek comment on how this might affect the adoption of these additional event codes and to what extent this device model is being used by EAS Participants.<sup>50</sup> How do the costs associated with implementing these event codes compare with the benefit that might result from their implementation?

12. Finally, we seek comment generally on whether we should make any other changes to the event codes currently set forth in the EAS Protocol. Are the event codes proposed by NWS the right event codes? Is there a better way to address the issues identified by NWS than these proposed changes?

### **B. Proposed Geographic Location Code Revisions**

13. NWS requests that the Commission revise the areas defined in the geographic location codes identified in section 11.31(f) of the EAS rules as location codes 75 and 77,<sup>51</sup> which cover offshore marine areas.<sup>52</sup> These location codes, and their defined areas, like all of the Offshore (Marine Areas) location codes contained in the EAS Protocol, were originally adopted in 2002 pursuant to a request by NWS.<sup>53</sup> Currently, the marine area defined for location code 75 covers “Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, N.C., following the coastline into Gulf of Mexico to Bonita Beach, FL, including the Caribbean,” while location code 77 covers “Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Bonita Beach, FL.”<sup>54</sup> NWS indicates that it has changed the end point it uses for generating weather alerts for both of these areas from Bonita Beach, FL, to Ocean Reef, FL, and, accordingly, requests that the area covered by location code 75 be changed to “Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, NC, following the coastline to Ocean Reef, FL, including the Caribbean,” and that the area covered by location code 77 be changed to “Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Ocean Reef, FL.”<sup>55</sup> According to the NWS, allowing the EAS rules to contain definitions for the two

<sup>46</sup> Letter from Michael Maginity, EAS Engineering Manager, Trilithic Inc. to Marlene H. Dortch, Secretary, FCC, EB Docket 04-296 (filed Feb. 6, 2015) (“Trilithic *Ex Parte* Letter”).

<sup>47</sup> 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 *Ex Parte* Letter”).

<sup>48</sup> 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 *Ex Parte* Letter”).

<sup>49</sup> *See id.* at 1.

<sup>50</sup> *See id.*

<sup>51</sup> *See* 47 C.F.R. § 11.31(f).

<sup>52</sup> *See NWS 2011 Request* at 1; *see also NWS Consolidated Request* at 1.

<sup>53</sup> *See supra* note 18.

<sup>54</sup> *See* 47 C.F.R. § 11.31(f).

<sup>55</sup> *See NWS 2011 Request* at 1.

offshore location codes that are inconsistent with the definitions that NWS has implemented for issuing its alerts may cause confusion for broadcasters, the emergency management community and the maritime commerce community, particularly when tropical storm and hurricane watches and warnings are issued for southern Florida.<sup>56</sup> NWS notes that it has checked with several EAS encoder/decoder manufacturers, and was informed that the cost and time to make the requested change would be nominal.<sup>57</sup>

14. We propose revising section 11.31 of our rules to adopt the definitional changes for location codes 75 and 77. As indicated above, location codes 75 and 77 were added as location codes in 2002 pursuant to a request by NWS,<sup>58</sup> and this proposed rule change amounts to a modification of a location definition created and primarily used by the NWS. We observe that, like all the Offshore (Marine Areas) location codes, location codes 75 and 77 are used with the Special Marine Warning (SMW) event code, among others, and thus are vital to maintaining the efficiency of marine operations and safety of vessels and their crews.<sup>59</sup> We also observe that NWS has indicated that it is already applying the revised definitions for location codes 75 and 77 in the field,<sup>60</sup> which suggests a potential for confusion among EAS Participants, the emergency management community and the maritime commerce community in a major hurricane corridor of the United States if the definitions for these location codes currently identified in section 11.31(f) are not harmonized with NWS's usage. We also propose revising footnote 1 of section 11.31 to delete the reference to a past deadline and to clarify that the numbers assigned to the offshore marine areas listed in the table of geographic areas in section 11.31(f), while consistent with the format of the state and territory location codes derived from the ANSI standard, are not a product of that standard, but rather were assigned by the NWS.<sup>61</sup>

15. With respect to cost considerations, NWS states that it has checked with several EAS encoder/decoder manufacturers, and was informed that the cost and time to make the requested change would be nominal.<sup>62</sup> Recent submissions by EAS equipment manufacturers suggest that the costs to EAS Participants for implementing these changes in their EAS equipment – like the event codes discussed in the previous section – are likely to be *de minimis*. For example, Sage states that end users could implement the proposed event codes discussed above, as well as the revised offshore location definitions by downloading a settings file and firmware update, respectively, the entire implementation process of which would take “10 minute[s] or less.”<sup>63</sup> Similarly, Monroe states that the location codes can be added to its equipment via a software update,<sup>64</sup> as does Trilithic, which adds that such update would be available at no charge.<sup>65</sup>

---

<sup>56</sup> See *NWS 2014 Comment 1* at 1.

<sup>57</sup> See *NWS Consolidated Request* at Attachments A, B.

<sup>58</sup> See *supra* note 18.

<sup>59</sup> See *2002 Report and Order*, 17 FCC Rcd at 4070, para. 36; see also National Oceanic and Atmospheric Administration, National Weather Service, *A Mariner's Guide to Marine Weather Services Coastal, Offshore and High Seas*, NOAA PA 98054, [http://www.nws.noaa.gov/os/brochures/marinersguide\\_coastal.htm](http://www.nws.noaa.gov/os/brochures/marinersguide_coastal.htm) (last visited May 1, 2015).

<sup>60</sup> See *NWS 2011 Request* at 1.

<sup>61</sup> In this regard, the Commission's determination of whether to revise the description of the offshore marine area location codes contained in section 11.31 of the rules would have no impact on, and would not be affected by, any processes required in connection with the ANSI standard.

<sup>62</sup> See *NWS 2014 Comment 1* at 1.

<sup>63</sup> Sage *Ex Parte* Letter at 2.

<sup>64</sup> See Monroe *Ex Parte* Letter.

<sup>65</sup> See Trilithic *Ex Parte* Letter.

16. We seek comment on our proposal to revise the geographic descriptions for location codes 75 and 77, as requested by NWS. Is such action necessary to prevent or ameliorate potential confusion among broadcasters, the emergency management community and the maritime commerce community that might otherwise exist if the current descriptions for these location codes in section 11.31(f) were left unchanged and continued to diverge from present usage by NWS? Would the proposed amendments to location codes 75 and 77 enhance the efficiency of marine operations and safety of vessels and their crews, and otherwise benefit the public? With respect to costs, we seek comment on whether the costs of implementing these proposed revisions to the location codes would be *de minimis*, as EAS equipment manufacturers suggest. Are there any EAS device models deployed by EAS Participants located in coastal geographic areas, in particular, that could not be updated to reflect these revisions?

### C. Implementation Schedule

17. We believe that the prompt deployment of alerts using these new codes is consistent with the safety of the public in affected areas. We realize that in order to ensure the full distribution to an affected community of an alert that uses one of these new codes, all EAS participants in the EAS distribution relay chain for that community must have equipment that is programmed to receive and process the new codes.<sup>66</sup> Accordingly, we propose that EAS equipment manufacturers integrate these codes 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 any rules adopted as a result of this notice.<sup>67</sup> We also would encourage State Emergency Coordination Committees (SECCs) to update their state and local EAS plans and to take any other steps necessary to ensure the smooth implementation of these new codes within their states (*e.g.*, by encouraging key sources which relay EAS messages to obtain the upgrades promptly).<sup>68</sup> Would these measures help ensure that all EAS Participants have the capability of updating their EAS equipment and of delivering alerts using these new codes to the public, such that the alert is successfully distributed throughout the EAS distribution relay chain? To ensure that all relevant alerts are received by their intended audiences, would it be helpful if, for an interim transitional period, NWS issued any alert that uses one of the new event codes concurrent with an alert that uses the current event code?<sup>69</sup> Would this help ensure that all EAS alerts reach their intended audience until the new codes are fully integrated into EAS architecture? Would it be reasonable to expect that all EAS Participants would voluntarily integrate the new codes within their systems no later than one year from the effective date of any such rules, such that one year would provide an adequate transition period for NWS to issue concurrent alerts?

18. We believe that enabling these codes in this timeframe will not unduly burden EAS

---

<sup>66</sup> See *supra* para. 2 for an explanation of the EAS distribution structure.

<sup>67</sup> See 47 C.F.R. §§ 11.32(a), 11.33(a) (EAS equipment must comply with the EAS protocol); see also Review of the Emergency Alert System, *Sixth Report and Order*, FCC 15-60, paras. 54-57 (rel. June 3, 2015) (One year is a reasonable time for EAS equipment manufacturers and EAS Participants to introduce new EAS codes into their systems and networks).

<sup>68</sup> State Emergency Communications Committees, or SECCs are volunteer groups, generally comprised of state and local public safety officials, state broadcast associations and other stakeholders, who are responsible for drafting State EAS Plans. See Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, *Report and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 1786, 1834, paras. 131-32 (1994). State EAS Plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and NWS personnel to activate the EAS. See 47 C.F.R. §11.21.

<sup>69</sup> In discussions with NWS, they have agreed that transition planning would be essential and that use of the new codes, if adopted, would need to be coordinated among stakeholders to help ensure that alerts using the new codes are received by all intended recipients during the transition period. See Telephone Interview by Gregory Cooke, Associate Division Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, with Timothy Schott, NWS Dissemination Services, National Weather Service (Jul. 8, 2015).

Participants or EAS equipment manufacturers. We note that the record indicates that most EAS device models already are capable of processing these codes, or can be made to do so with minor software modifications.<sup>70</sup> Further, as the Commission has clarified previously, modifications to authorized EAS equipment that are necessary to implement revisions to the EAS event codes and location codes may be implemented as Class I permissive changes that do not require prior authorization to be implemented.<sup>71</sup> Accordingly, we suggest that the implementation schedule proposed herein would afford a reasonable period of time and would not present any undue burden. We seek comment on this conclusion.

#### IV. PROCEDURAL MATTERS

##### A. Ex Parte Rules

19. The proceeding this Notice initiates shall be treated as “permit-but-disclose” proceedings in accordance with the Commission’s *ex parte* rules.<sup>72</sup> 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

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

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties that 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

---

<sup>70</sup> See *supra* paras. 10, 15.

<sup>71</sup> See *Fifth Report and Order*, 27 FCC Rcd at 705, para. 180; see also 47 C.F.R. § 2.1043(b)(1).

<sup>72</sup> 47 C.F.R. §§ 1.1200 – 1.1216.

must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

21. 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### C. Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. § 604, 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, 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

23. 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, *see* 44 U.S.C. 3506(c)(4).

## V. ORDERING CLAUSES

24. 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.

25. 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

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) and (f) 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.

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	EWV.
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	HWV.
High Wind Watch	HWA.
Hurricane Warning	HUV.

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.

(f) The All U.S., State, Territory and Offshore (Marine Area) ANSI number codes (SS) are as follows. County ANSI numbers (CCC) are contained in the State EAS Mapbook.

	ANSI#
State:	
AL	01
AK	02
AZ	04
AR	05
CA	06
CO	08
CT	09
DE	10
DC	11
FL	12
GA	13
HI	15
ID	16
IL	17
IN	18
IA	19
KS	20
KY	21
LA	22
ME	23
MD	24
MA	25
MI	26
MN	27
MS	28
MO	29
MT	30
NE	31
NV	32

NH	33
NJ	34
NM	35
NY	36
NC	37
ND	38
OH	39
OK	40
OR	41
PA	42
RI	44
SC	45
SD	46
TN	47
TX	48
UT	49
VT	50
VA	51
WA	53
WV	54
WI	55
WY	56
Terr.:	
AS	60
FM	64
GU	66
MH	68
MH	68
PR	72
PW	70
UM	74
	78
Offshore (Marine Areas) <sup>1</sup> :	
Eastern North Pacific Ocean, and along U.S. West Coast from Canadian border to Mexican border	57
North Pacific Ocean near Alaska, and along Alaska coastline, including the Bering Sea and the Gulf of Alaska	58
Central Pacific Ocean, including Hawaiian waters	59
South Central Pacific Ocean, including American Samoa waters	61
Western Pacific Ocean, including Mariana Island waters	65
Western North Atlantic Ocean, and along U.S. East Coast, from Canadian border south to Currituck Beach Light, N.C	73

---

Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, NC, following the coastline to Ocean Reef, FL, including the Caribbean	75
Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Ocean Reef, FL	77
Lake Superior	91
Lake Michigan	92
Lake Huron	93
Lake St. Clair	94
Lake Erie	96
Lake Ontario	97
St. Lawrence River above St. Regis	98

---

<sup>1</sup> The numbers assigned to the offshore marine areas listed in this table are not described under the ANSI standard, but rather are numeric codes that were assigned by NWS.

\* \* \* \* \*

**APPENDIX B****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact of the proposals described in the attached *Notice of Proposed Rulemaking* on small entities. 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).<sup>2</sup> In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

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

2. In this *Notice of Proposed Rulemaking*, the Commission proposes to add three new Emergency Alert System (EAS) Event Codes, covering extreme wind (“Extreme Wind Warning”) and storm surges (“Storm Surge Watch” and “Storm Surge Warning”), and proposes to revise the territorial boundaries of geographic location codes 75 and 77 used by the EAS. These proposed rule revisions would seek to improve the capacity of the EAS to warn the public of impending threats to life and property, and ensure that the geographic definitions of location codes 75 and 77 utilized by the EAS are harmonized with those employed by the NWS.

**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 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.<sup>4</sup> First, nationwide,

---

<sup>1</sup> 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> See 5 U.S.C. §§ 601(3)–(6).

there are a total of approximately 28.2 million small businesses, according to the SBA.<sup>5</sup> As of 2011, small businesses comprise 99.7 percent of all employer firms in the US.<sup>6</sup> In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>7</sup> Nationwide, as of 2007, there were approximately 1,621,315 small organizations.<sup>8</sup> Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>9</sup> Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.<sup>10</sup> We estimate that, of this total, as many as 88,506 entities may qualify as “small governmental jurisdictions.”<sup>11</sup> Thus, we estimate that most governmental jurisdictions are small.

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 an external source.<sup>12</sup> The SBA defines a radio broadcasting entity that has \$38.5 million or less in annual receipts as a small business.<sup>13</sup> According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of \$38.5 million or less. Therefore, the majority of such entities are small entities. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917.<sup>14</sup> We do not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.<sup>15</sup> In addition, to be determined to be a “small business,” the entity may not

---

<sup>5</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (showing figures are from March 2014).

<sup>6</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” *available at* [http://www.sba.gov/sites/default/files/FAQ\\_Sept\\_2012.pdf](http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf) (last visited Nov. 14, 2014).

<sup>7</sup> 5 U.S.C. § 601(4).

<sup>8</sup> INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC & DESK REFERENCE* (2010).

<sup>9</sup> 5 U.S.C. § 601(5).

<sup>10</sup> U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 2011*, Table 427 (2007)

<sup>11</sup> The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 small governmental organizations in 2007. If we assume that county, municipal, township and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,125. If we make the same assumption about special districts, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 special districts. Therefore, of the 89,476 small governmental organizations documented in 2007, as many as 88,506 may be considered small under the applicable standard. This data may overestimate the number of such organizations that has a population of 50,000 or less. U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES 2011*, Tables 427, 426 (Data cited therein are from 2007).

<sup>12</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; [http://www.census.gov/cgi-bin/sssd/naics/naicsreh?code=515112&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsreh?code=515112&search=2007%20NAICS%20Search).

<sup>13</sup> See 13 C.F.R. § 121.201, NAICS Code 515112. See also *Small Business Size Standards*, 77 Fed. Reg. at 72704.

<sup>14</sup> *March 31, 2013 Broadcast Station Totals Press Release*.

<sup>15</sup> “[Businesses] are affiliates of each other when one [business] controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

be dominant in its field of operation.<sup>16</sup> We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

7. *Low-Power FM Stations.* The same SBA definition that applies to radio broadcast licensees would apply to low power FM (“LPFM”) stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. Currently, there are approximately 864 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

8. *Television Broadcasting.* The SBA defines a television broadcasting station that has no more than \$38.5 million in annual receipts as a small business.<sup>17</sup> Business concerns included in this industry are those primarily engaged in broadcasting images together with sound.<sup>18</sup> These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.<sup>19</sup> 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.<sup>20</sup> Programming may originate in the station’s own studio, from an affiliated network, or from an external source.<sup>21</sup>

9. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of \$38.5 million or less. Based on this data and the associated size standard, we conclude that the majority of such establishments are small. The Commission has estimated the number of licensed noncommercial educational (“NCE”) stations to be 396.<sup>22</sup> We do not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low-power television (“LPTV”) stations, and 4,518 licensed TV translators.<sup>23</sup> Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

10. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.<sup>24</sup> Our estimate, therefore, likely overstates the number of small entities affected by the proposed rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

---

<sup>16</sup> See 13 C.F.R. § 121.102(b).

<sup>17</sup> Television broadcasting stations with no more than \$38.5 million in annual receipts are considered a small business pursuant to the SBA’s standards. See Small Business Size Standards: Information, 77 Fed. Reg. 72702, 72704 (Dec. 6, 2012).

<sup>18</sup> See 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2007%20NAICS%20Search).

<sup>22</sup> News Release, *Broadcast Station Totals as of March 31, 2013* (MB rel. Apr. 12, 2013) (“*March 31, 2013 Broadcast Station Totals Press Release*”), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0412/DOC-320138A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0412/DOC-320138A1.pdf).

<sup>23</sup> See *March 31, 2013 Broadcast Station Totals Press Release*.

<sup>24</sup> “[Businesses] are affiliates of each other when one [business] controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

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

12. *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.<sup>25</sup> Based on U.S. Census data for 2007, in that year 659 establishments operated for the entire year. Of that 659, 197 operated with annual receipts of \$10 million a year or more. The remaining 462 establishments operated with annual receipts of less than \$10 million. Based on this data, the Commission estimates that the majority of establishments operating in this industry are small.<sup>26</sup>

13. *Cable System Operators (Rate Regulation Standard).* The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.<sup>27</sup> Industry data shows that there were 1,141 cable companies at the end of June 2012.<sup>28</sup> Of this total, all but 10 incumbent cable companies are small under this size standard.<sup>29</sup> In addition, under the Commission’s

---

<sup>25</sup> See 13 C.F.R. 121.201, NAICS Code 515210.

<sup>26</sup> AMERICAN FACT FINDER, UNITED STATES CENSUS BUREAU, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ1&prodType=prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ1&prodType=prodType=table). (last visited Mar. 16, 2015).

<sup>27</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>28</sup> NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, FCC 13-99 at ¶ 24 (rel. July 22, 2013) (“15<sup>th</sup> Annual Competition Report”).

<sup>29</sup> See SNL Kagan, “Top Cable MSOs – 12/12 Q;” available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (i.e., 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) (“CALM Act Report and Order”) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>30</sup> Current Commission records show 4,945 cable systems nationwide.<sup>31</sup> Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

14. *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 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>32</sup> There are approximately 56.4 million incumbent cable video subscribers in the United States today.<sup>33</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>34</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>35</sup> 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.<sup>36</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

15. *Satellite Telecommunications*. The Commission has not developed a small business size standard specifically for providers of satellite service. The SBA definition of small Satellite Telecommunications entities comprises those that have \$32.5 million or less in average annual receipts.<sup>37</sup> For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year.<sup>38</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>39</sup> Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

---

<sup>30</sup> 47 C.F.R. § 76.901(c).

<sup>31</sup> The number of active, registered cable systems comes from the Commission’s Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

<sup>32</sup> 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>33</sup> *See* NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>34</sup> 47 C.F.R. § 76.901(f); *see also* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>35</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>36</sup> 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).

<sup>37</sup> 13 C.F.R. § 121.201, NAICS code 517410.

<sup>38</sup> *See* AMERICAN FACT FINDER, UNITED STATES CENSUS BUREAU, [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>39</sup> *Id.*

16. *Other Telecommunications.* This category includes “establishments primarily engaged in . . . providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>40</sup> The SBA definition of Other Telecommunications entities comprises those that have \$32.5 million or less in average annual receipts.<sup>41</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>42</sup> Of this total, 2,346 firms had annual receipts of under \$25 million and 37 firms had annual receipts of \$25 million to \$49,999,999.<sup>43</sup> Consequently, the Commission estimates that the majority of *Other Telecommunications* firms are small entities that might be affected by our action.

17. *The Educational Broadcasting Services.* In addition, the SBA’s placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. 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.”<sup>44</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.<sup>45</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>46</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>47</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission’s internal records indicate that as of September 2014, there are 2,207 active EBS

---

<sup>40</sup> Office of Management and Budget, North American Industry Classification System, 513 (1997) (NAICS code 517910).

<sup>41</sup> 13 C.F.R. § 121.201, NAICS code 517910.

<sup>42</sup> AMERICAN FACT FINDER, UNITED STATES CENSUS BUREAU, [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>43</sup> AMERICAN FACT FINDER, UNITED STATES CENSUS BUREAU, [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-lang=en)

<sup>44</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. 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”).

<sup>45</sup> 13 C.F.R. § 121.201; 2012 NAICS code 517110.

<sup>46</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>47</sup> *Id.*

licenses.<sup>48</sup> 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.<sup>49</sup>

18. *Broadband Radio Service.* Broadband Radio Service (“BRS”) systems, also 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 BRS and Educational Broadband Service (“EBS”).<sup>50</sup> In connection with the 1996 BRS auction, the Commission established a “small business” as an entity that had annual average gross revenues of no more than \$40 million in the previous three years.<sup>51</sup> 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.<sup>52</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, which resulted in the licensing of 78 authorizations in the BRS areas.<sup>53</sup> 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) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive 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) will receive a 35 percent discount on its winning bid.<sup>54</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>55</sup> Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

---

<sup>48</sup> FCC, UNIVERSAL LICENSING SYSTEM, [http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp;JSESSIONID\\_ULSSEARCH=wJ50JkbCQKvNWBjv1s0ZZWQQs1FnmNDjQwvSHsDG2FHSyGV6hdf!203694623!-701794836](http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp;JSESSIONID_ULSSEARCH=wJ50JkbCQKvNWBjv1s0ZZWQQs1FnmNDjQwvSHsDG2FHSyGV6hdf!203694623!-701794836).

<sup>49</sup> The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

<sup>50</sup> Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Dkt. No. 94-131, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995).

<sup>51</sup> *Id.* at 9670-73, ¶¶ 190-92.

<sup>52</sup> 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.

<sup>53</sup> 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).

<sup>54</sup> *Id.* at 8296 ¶ 73.

<sup>55</sup> Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, *Public Notice*, 24 FCC Rcd 13572 (2009).

19. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,<sup>56</sup> which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>57</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>58</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>59</sup> Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.<sup>60</sup> Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.<sup>61</sup> Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

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

20. None.

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

21. 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

<sup>56</sup> See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based 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.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>57</sup> 13 C.F.R. § 121.201; 2012 NAICS code 517110.

<sup>58</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>59</sup> *Id.*

<sup>60</sup> 13 C.F.R. § 121.201; NAICS code 517510 (2002).

<sup>61</sup> See *15<sup>th</sup> Annual Competition Report*, at ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at ¶¶ 27, 110-11.

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.<sup>62</sup>

22. The rule changes contemplated by the *Notice of Proposed Rulemaking* would implement certain EAS warning codes and location code definitional changes that are unique, and implemented by small entity and larger-sized regulated entities on a voluntary basis. Thus, the *Notice of Proposed Rulemaking* does not propose mandated burdens on regulated entities of any size. Moreover, the costs associated with voluntarily implementing the codes contained in the proposed rule changes are expected to be *de minimis* or non-existent. Commenters are invited 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**

23. None.

---

<sup>62</sup> 5 U.S.C. §§ 603(c)(1)-(c)(4).