of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Nebraska, is amended by adding DTV channel 6 and removing DTV channel 18 at Hayes Center.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–511 Filed 1–12–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231 and ET Docket No. 99–254; FCC 08–255]

Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies several points regarding video programming distributors' obligations to close caption digital programming in light of technological changes inherent in the digital television transition for full-power broadcasting. The Commission also amends the closed captioning rules to provide for more efficient complaint processes and methods for consumers to contact distributors with concerns about closed captioning.

DATES: *Effective:* February 12, 2009, except 47 CFR 79.1(g)(1) through (5) and 47 CFR 79.1(i) which contain information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date for the new and revised information collection requirements. Interested parties (including the general public, OMB, and other Federal agencies) that wish to submit written comments on the PRA information collection requirements must do so on or before March 16, 2009.

ADDRESSES: Interested parties may submit PRA comments identified by OMB Control Number 3060–0761, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their comments to *PRA@fcc.gov*. Please include CG Docket Number 05–231, ET Docket Number 99–254, and OMB Control Number 3060–0761 in the subject line of the message.
- *Mail:* Parties who choose to file by paper should submit their comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Amelia Brown, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–2799 (voice), (202) 418–7804 (TTY), or e-mail at *Amelia.Brown@fcc.gov*. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers,* Declaratory Ruling and Order (*2008 Digital Closed Captioning Declaratory Ruling and Order*), document FCC 08–255, adopted November 3, 2008, and released November 7, 2008, in CG Docket No. 05–231 and ET Docket No. 99–254. Document FCC 08–255 addresses issues arising from the Commission's Report and Order, *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (Closed Captioning Report and Order),* MM Docket No. 95–176, FCC 97–279, published at 62 FR 48487, September 16, 1997; the Commission's Order on Reconsideration, *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (Closed Captioning Reconsideration Order),* MM Docket No. 95–176, FCC 98–236, published at 63 FR 55959, October, 20, 1998; the Commission's Report and Order, *Closed Caption Decoder Requirements for Digital Television Receivers, Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (DTV Closed Captioning Order),* ET Docket No. 99–254, FCC 00–259, published at 65 FR 58467, September 29, 2000; and the Commission's Notice of Proposed Rulemaking, *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, (2005 Closed Captioning NPRM)*, CG Docket No. 05–231, FCC 05–142, published at 70 FR 56150, November 25, 2005. The full text of document FCC 08–255 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 08–255 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *www.bcpiweb.com* or by calling 1–800–378–3160. 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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 08–255 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/caption.html*.

Paperwork Reduction Act of 1995 Analysis

Document FCC 08–255 contains new and modified information collection requirements subject to the PRA of 1995. It will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. Public and agency comments are due March 16, 2009. In addition, the Commission notes pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), that the Commission previously sought specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this document, the Commission assessed the effects of requiring that video programming distributors provide contact information on their Web sites (if they have a Web site) and in bills and phone directories so that consumers can more easily complain about closed captioning concerns. The Commission also assessed the effects of providing this information to the FCC for posting on the FCC's Web site. The Commission has also considered the impact of requiring that distributors forward complaints to the appropriate entity for response, where applicable, and notifying the FCC and the complainant that the complaint has been forwarded. The Commission finds that none of these requirements will pose a substantial burden for businesses with fewer than 25 employees.

Synopsis

1. Closed captioning is an assistive technology that provides persons with hearing disabilities access to television programs. Closed captioning displays the audio portion of a television signal as printed words on the television screen. The Television Decoder Circuitry Act of 1990 (TDCA) requires closed captioning capability for all television receivers with screen sizes of 13 inches or larger, manufactured or sold in the United States. As part of the Telecommunications Act of 1996, Congress added a section entitled ''Video Programming Accessibility,'' to the Communications Act. Section 713 requires closed captioning of video programming to ensure access for persons with hearing disabilities. In 1997, the Commission adopted rules and implementation schedules for closed captioning that became effective on January 1, 1998. The implementation schedules for captioning differ, based on whether the programming is analog or digital, Spanish or English, and whether it is pre-rule (*i.e.*, older) or new programming. The dates that determine whether digital programming is pre-rule or new differ from the dates used to determine whether analog programming is pre-rule or new because, when the Commission established the closed captioning rules in 1997, final standards for digital television (DTV) receivers did not yet exist, making it difficult to format captions for such receivers. In July 2000, the Commission adopted technical standards for the display of closed captions on DTV receivers. At the same time, the Commission established July 1, 2002, as the date that determines whether digital programming constitutes new or pre-rule programming, and adopted the same benchmark transition periods for new and pre-rule digital programming that exists for analog programming.

2. In the *Declaratory Ruling,* the Commission clarifies programming distributors' obligations to close caption digital programming. First, although a particular digital channel may be exempt for other reasons pursuant to § 79.1(d) of the Commission's rules, no digital channel, including an HD channel, is automatically exempt from the captioning rules simply because it is being transmitted in digital. Where a digital channel is exempt from the closed captioning rules, the distributor is still obligated to pass through any captioning it receives, but is not obligated to create new digital captions where only analog captions are provided.

3. Second, where an existing broadcaster ceases operations on its current analog channel after the completion of the digital transition for full power television, and commences or continues to air programming on its main digital channel, that broadcaster is required to close caption its main digital channel pursuant to the relevant captioning benchmarks, as if there had been no change. With regard to broadcasters that are currently simulcasting their programming on their analog channel and main digital channel, they must caption the digital channel as well as the analog channel.

4. Third, the ''new network'' exemption under § 79.1(d)(9) of the Commission's rules does not apply to a channel that merely transitions from analog to digital.

5. Fourth, in order for program distributors to count captioned digital programming toward their closed captioning requirements, they must transmit captions that can be decoded by the decoders in analog television sets even after the digital transition on February, 17, 2009.

6. Finally, the Commission reminds MVPDs that provide customer premises equipment (CPE), such as set-top boxes, to their subscribers, that they are responsible for ensuring that this equipment transmits all available captions to the television set, for both analog and digital formatted programs. Failure of the equipment to pass through captions would cause the distributor to be in violation of the pass-through requirement.

7. In the *Order,* the Commission amends the closed captioning rules to provide for more efficient complaint processes and methods for consumers to contact distributors with concerns about closed captioning. The Order addresses certain issues raised in the July 21, 2005, Notice of Proposed Rulemaking (*2005 Closed Captioning NPRM*), which initiated a proceeding to examine the Commission's closed captioning rules.

8. The Order revises the closed captioning rules to permit the filing of closed captioning complaints with either the video programming distributor or the Commission. The Commission will still require closed captioning complaints to be in writing, and filed by e-mail, fax, or letter. Consumers may file their complaint using the FCC Form 2000–C, which will be amended to delete the requirement that closed captioning complaints must first be filed with the distributor, and to add questions eliciting information about the name and type of MVPD, if any, to whom a complainant subscribes.

9. The *Order* amends the time frames associated with filing closed captioning complaints. Regardless of whether the consumer files a complaint with the Commission or a video programming distributor, the consumer must file the complaint within sixty (60) days of the captioning problem. If the complaint is first filed with the Commission, the Commission shall promptly forward complaints that satisfy the complaint criteria to the appropriate video programming distributor. For a complaint forwarded by the Commission, video programming distributors must respond to the complainant in writing within thirty (30) days of receipt of the complaint from the Commission. For a complaint first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor fails to respond to the

complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the video programming distributor to respond. If a consumer re-files his or her complaint with the Commission (after filing with the distributor), the Commission will forward the complaint to the distributor, and the distributor shall respond to the Commission and the complainant within thirty (30) days of receipt of the complaint from the Commission.

10. A video programming distributor receiving a complaint regarding programming of a broadcast television licensee, or programming over which the video programming distributor does not exercise editorial control, must forward the complaint within seven (7) days to the appropriate party and inform the complainant that it has forwarded the complaint. The video programming distributor also must notify the Commission that it forwarded the complaint. Similar to the time period established for responding to complaints sent to the correct video programming distributor, the entity receiving the forwarded complaint shall respond to the complainant within 30 days of the forwarding date of the complaint.

11. In order to assist consumers in filing closed captioning complaints, and to expedite further the handling of complaints, the Commission encourages consumers to include the following information in their filing: (1) The complainant's contact information, including name, mailing address, daytime phone number, and e-mail address if available; (2) the name of the broadcast station and, if applicable, the name and type of MVPD against whom the complaint is directed; (3) the name of the television program; (4) the date and time the closed captioning problem occurred; and (5) a description of the closed captioning problem. Where it appears from the video programming distributor's response to a complaint, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter resolved, and will so notify the complainant. In all other cases, the Commission shall inform the parties of its review and disposition of the informal complaint. Complaints may also be referred to the Enforcement Bureau.

12. The *Order* also adopts new rules requiring video programming distributors to make their contact information available to consumers. Specifically, the Commission requires video programming distributors to make available two different kinds of contact information—contact information for the receipt and handling of immediate closed captioning concerns by consumers, and contact information for written closed captioning complaints.

13. First, the Commission requires video programming distributors to make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers (*e.g.*, the captions suddenly disappear or become garbled). To this end, programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. To the extent that a distributor has personnel available, either onsite or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. The Commission is not requiring distributors to alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and able to address closed captioning concerns. In situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours.

14. Second, the Commission requires video programming distributors to make contact information available for the receipt and handling of written closed captioning complaints filed pursuant to § 79.1(g) of the Commission's rules that do not raise the type of immediate issues that are addressed above. This contact information shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with the Commission's rules, as well as the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. Distributors shall include the required contact information on their Web sites (assuming the distributor has a Web site), in telephone directories, and in billing statements (to the extent billing statements are issued). Distributors shall keep their contact information current, and when there are changes they must update this information as promptly as possible, and in any event within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

15. To assist consumers in locating contact information, the Commission shall provide a list of video programming distributors' contact information (*i.e.*, the name of the appropriate person and/or office to contact, telephone numbers, e-mail addresses) on its Web site. To establish this listing, video programming distributors and broadcast services must file the required contact information, for both immediate concerns and written captioning complaints, with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or by sending the information to *CLOSEDCAPTIONING_POC@fcc.gov*, within 30 days of the publication in the **Federal Register** of a notice announcing approval by the Office of Management and Budget. After compiling and posting the list on the FCC's Web site, Commission staff shall prepare a Public Notice advising consumers and other interested parties how to obtain access to the contact information. This information shall also be available by telephone inquiry to the Commission's Consumer Center. Distributors shall promptly notify the Commission each time there is a change in any of this required information, and in any event within 10 business days.

Final Regulatory Flexibility Certification

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (2005 Closed Captioning NPRM)* in this proceeding. *2005 Closed Captioning NPRM,* 20 FCC Rcd at 13234, published at 70 FR 56150, November 25, 2005. The Commission sought written public comment on the proposals in the *2005 Closed Captioning NPRM,* including comment on the IRFA. The Commission received one comment on the IRFA, and it is discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

Need for, and Objectives of, the Order

17. The purpose of this proceeding was to consider the current status of the Commission's closed captioning rules. The rulemaking that was initiated in 2005 followed up on the Commission's prior assurances, made at the time the closed captioning rules were adopted in 1997, that certain captioning provisions would be reviewed and evaluated at a future date. The 2005 rulemaking sought to determine whether any revisions

should be made to enhance the effectiveness of the closed captioning rules.

18. The closed captioning rules that were adopted in 1997 require that all video programming distributors, including over-the-air broadcast television services and all multichannel video programming distributors (''MVPDs'') (including cable television, direct-to-home satellite services, wireless cable systems, satellite master antenna television, and open video systems) increase gradually the amount of captioned programming offered and, generally require that 100 percent of new English language programming be closed captioned as of January 1, 2006, subject to certain exceptions. ''Video programming distributor'' is defined in 47 CFR 79.1(a)(2) as any television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of the Commission's rules, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. New analog programming is defined as analog programs first published or exhibited on or after January 1, 1998. 47 CFR 79.1(a)(5) of the Commission's rules. New digital programming is defined as digital programming first aired after June 30, 2002. *Closed Caption Decoder Requirements for Digital Television Receivers and Converter Boxes, Closed Captioning and Video Description of Video Programming , Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* ET Docket No. 99–254, MM Docket No. 95–176, Report and Order, 15 FCC Rcd 16788, 16790–91, paragraph 5 (July 31, 2000) (*DTV Closed Captioning Order*), published at 65 FR 58467, September 29, 2000. Additionally, these rules established a transition period for captioning of pre-rule programming, and required that 75 percent of all pre-rule nonexempt English language programming delivered to consumers during the first quarter of 2008 and thereafter must be captioned. 47 CFR 79.1(b)(2)(ii) of the Commission's rules. Pre-rule analog programming is defined as programs first published or exhibited before January 1, 1998. 47 CFR 79.1(a)(6) of the Commission's rules. Pre-rule digital programming is defined as digital programming first aired before July 1, 2002. *DTV Closed Captioning Order*, 15 FCC Rcd at 16790–91, paragraph 5. The rules also require that, pursuant to an established phase-in schedule, as of January 1, 2010, 100 percent of nonexempt new Spanish language programming be closed captioned, and, as of January 1, 2012, and thereafter, 75 percent of nonexempt Spanish language pre-rule programming be closed captioned. 47 CFR 79.1(b)(3)(iv) and 47 CFR 79.1(b)(4)(ii) of the Commission's rules. The existing rules contain several exemptions, pursuant to which entities or programming that meet the prescribed criteria are exempt from the rules without having to seek Commission approval. 47 CFR 79.1(d) of the Commission's rules. In addition, the existing rules provide a process whereby video programming providers may petition the Commission for an exemption from the rules where it would be an undue burden to require captioning. 47 CFR 79.1(f) of the Commission's rules.

19. The *2005 Closed Captioning NPRM* sought comment on several aspects of the rules. It also sought comment on a Petition for Rulemaking that was filed by Telecommunications for the Deaf, Inc. and several other consumer advocacy groups. It sought comment on, *inter alia,* the possibility that the existing rule would allow for shorter complaint filing and response times, what those time frames should be, and on the possibility that complainants should be permitted to complain directly to the Commission without complaining to the video programming distributor first. Further, the *2005 Closed Captioning NPRM* sought comment on the possibility that video programming distributors would be required to provide contact information to viewers and to give this information to the Commission for posting on the Commission's Web site, in order to assist consumers in having their closed captioning concerns addressed more quickly.

20. The *Order* responds to the proposals made in the *2005 Closed Captioning NPRM* and the Comments submitted thereto. Specifically, the *Order* amends the existing closed captioning rules to shorten the complaint processing times and allows complaints to be filed directly with the FCC. The *Order* also adopts a new requirement that video programming distributors make information available on their Web sites (if they have a Web site) in bills and in directories to make it easier for closed captioning consumers to contact them with closed captioning concerns and complaints. The *Order* also adds a requirement to the rules to ensure that any staff reachable through the above-noted contact information has the capability to immediately respond to and address consumers' concerns.

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

21. Media Captioning Services (MCS) filed the only comment in this proceeding responding to the IRFA. *See* Comments of Media Captioning Services (MCS) to Marlene H. Dortch, Secretary, FCC, November 9, 2005. As stated, MCS' comments were the only comments we received regarding the regulatory flexibility analysis. Several other commenters raised concerns regarding the impact of the proposals on small entities, but not in the regulatory flexibility context. Some of these commenters would be considered small businesses. In general, these commenters stated that the proposals set forth in the *2005 Closed Captioning NPRM* could result in increased costs and decreased local programming. For example, Hubbard Broadcasting commented that real-time captioning services are ''disproportionately burdensome'' to smaller broadcasters, and that the suggestions proposed in the *2005 Closed Captioning NPRM* would ''vastly increase the costs of local news production.'' Reply Comments of Hubbard Broadcasting, Inc. at 4–5. MCS commented on many issues raised in the *2005 Closed Captioning NPRM*, as well. Specifically, with regard to the issues raised in the *2005 Closed Captioning NPRM*, MCS commented that, in order to encourage high quality captioning, the FCC should promote tax incentives for video programmers who use very small captioning concerns to meet captioning requirements; should utilize the antitrust laws (presumably to penalize entities that engage in anticompetitive behavior resulting in higher captioning prices); should use the Telecommunications Relay Service fund to compensate very small captioning companies; and should establish a fund from the sale of analog spectrum to compensate very small captioning companies that provide captioning services to video programmers in the DMAs between 26 and 100. MCS also suggested that the Commission require a functional equivalence guideline for real-time captioning and for pre-produced programming. MCS offered specific suggestions for these standards, and MCS also suggested that complaints regarding closed captioning should be directed to the video programming distributor and the FCC, simultaneously.

22. In its comments pertaining to the regulatory flexibility analysis, MCS

noted that the IRFA does not include any discussion of the impact that proposed regulations would have on closed captioning companies. MCS noted that SBA considers companies providing real-time captioning services with annual gross receipts of $6 million or less to be small entities, and considers companies earning $25 million or less from pre-production business to be small entities. MCS asserted that virtually all companies in the closed captioning industry would be classified as small businesses. In its comments, MCS referred to Standard Industry Classification (SIC) codes. However, SIC codes were replaced on August 26, 2008, by North American Industry Classification System (NAICS) codes; accordingly, the FCC must use the NAICS codes. MCS stated that the definitions are deficient since an ''element of the definition of 'small business' is that the entity would not be dominant in its field of operations.'' However, according to MCS, three dominant companies in the industry would be classified as small entities based on the annual gross receipts standards noted above.

23. The Commission appreciates the comments filed by MCS in this regard. The Commission notes that video programming distributors (VPDs) are the entities directly responsible for compliance with closed captioning rules, and may only air programming that is not captioned if the programming is not subject to a captioning benchmark or is exempt from the rules pursuant to §§ 79.1(d) or 79.1(f) of the Commission's rules. Even with regard to programming that is not produced by a video programming distributor, the VPD is responsible for ensuring that the program owner has certified that it or its programming is exempt from the closed captioning rules. Although closed captioning companies play a vital role in the closed captioning regime, they are not the entities that are directly affected by the Commission's requirements that video programming be captioned, because they are not the entities ultimately responsible for compliance with the closed captioning rules. The 2005 IRFA included all multi-channel video programming distributors and broadcasters—these are the entities that are ultimately responsible for closed captioning. In addition to captioners, program owners and producers that are not the video programming distributors were also omitted from the 2005 IRFA, for the same reason—they are merely indirectly affected by the rules and are not ultimately responsible for compliance with the rules. However, in order to better inform the public about our actions and to create a more complete record in this FRFA, the Commission is including captioners as entities affected by the modifications adopted in the *Order* (*see* paragraphs 28–30, *infra*).

Description and Estimate of the Number of Small Entities Impacted

24. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. 5 U.S.C 601(6). 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 SBA. 5 U.S.C. 632.

25. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002). A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. Independent Sector, The New Nonprofit Almanac & Desk Reference (2002). 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.'' 5 U.S.C. 601(5). Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. U.S. Census Bureau, Statistical Abstract of the United States: 2006, § 8, page 272, Table 415. The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.'' The Commission assumes that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, § 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. Thus, the Commission estimates that most governmental jurisdictions are small.

26. *Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' U.S. Census Bureau, 2002 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.* The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' 13 CFR 121.201, NAICS code 517110. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size: 2002 (Including Legal Form of Organization),'' Table 5, NAICS code 517110 (issued Nov. 2005). Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more. The 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.'' Thus, under this category and associated small business size standard, the majority of firms can be considered small.

27. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.* The SBA has developed a small business size standard for this category, which is: All

such firms having 1,500 or fewer employees. The NAICS Code associated with this size standard is 517110. To gauge small business prevalence for these cable services, we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Thus, the majority of these firms can be considered small.

28. *Cable Companies and Systems*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. 47 CFR 76.901(e) of the Commission's rules. The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995), published at 60 FR 35854, July 12, 1995. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. 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. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. 47 CFR 76.901(c) of the Commission's rules. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Warren Communications News, *Television & Cable Factbook 2006,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of October 2005). The data do not include 718 systems for which classifying data were not available. Thus, under this second size standard, most cable systems are small. Wired Telecommunications Carriers with fewer than 1500 employees are considered to be small. *See* 13 CFR 121.201, NAICS code 517110.

29. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 43(m)(2); *see* 47 CFR 76.901(f) of the Commission's rules and nn. 1–3. 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. 47 CFR 76.901(f); Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. 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. 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, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard. 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.

30. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. As noted, Wired Telecommunications Carriers with fewer than 1500 employees are considered to be small, under the currently applicable SBA classification. NAICS Code 517110. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Thus, under this size standard, the majority of firms can be considered small.

31. *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 falls under the SBA definition of ''Wireless Telecommunications Carriers (except satellite)'', which establishes as a small DBS company any DBS company which has less then 1500 employees. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DirecTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide. *See* Annual Assessment of Status of

Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report, FCC 05–13, paragraph 55 (released February 4, 2005) (''2005 Cable Competition Report''), published at 60 FR 35854, July 12, 1995. EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide. *See* 2005 Cable Competition Report, paragraph 55. A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $13.5 million, and thus does not qualify as a small business. Rainbow DBS, which provides service under the brand name VOOM, reported an estimated 25,000 subscribers. *See* 2005 Cable Competition Report, paragraph 55. The fourth DBS operator, Dominion Video Satellite, Inc. (''Dominion''), offers religious (Christian) programming and does not report its annual receipts. Dominion, which provides service under the brand name Sky Angel, does not publicly disclose its subscribership numbers on an annualized basis. The Commission does not know of any source which provides this information and, thus, the Commission has no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

32. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.* The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts. 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008). The Commission has estimated the number of licensed commercial television stations to be 1,379. *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf*. In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less. The Commission recognizes that BIA's estimate differs slightly from the FCC total given *supra.* The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

33. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1). The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

34. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf*. These stations are non-profit, and therefore considered to be small entities. *See generally* 5 U.S.C. 601(4), (6). In addition, there are also 2,295 low power television stations (LPTV). *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf*.

Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

35. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997), published at 62 FR 16514, April 7, 1997. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997). An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997). The SBA has approved these small business size standards in the context of LMDS auctions. *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998). There were 93 winning bidders

that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses. Because some LMDS services may not have been auctioned, the SBA standard which applies to such services is Wireless Telecommunications Carriers (except satellite), pursuant to which a service is small if it has fewer than 1500 employees. The NAICS Code for this SBA classification is 517110.

36. *Wireless Telecommunications Carriers (except satellite)*. NAICS code 517210. Standard for small business is 1500 employees or fewer. Wireless Telecommunications Carriers, except satellite, is a NAICS standard which has a size standard of fewer than 1500 employees. NAICS Code 517210. Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. As noted, within the category of Wireless Telecommunications Carriers, except satellite, such firms with fewer than 1500 employees are considered to be small. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). The SBA small business size standard for the broad census category of Wireless Telecommunications Carriers, which consists of such entities with fewer than 1,500 employees, appears applicable to MDS and ITFS. Other standards also apply, as described.

37. The Commission has defined small MDS (now BRS) entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Wireless Telecommunications Carriers (except satellite). 13 CFR 121.201, NAICS Code 517210. As noted, within the category of Wireless Telecommunications Carriers, such firms with fewer than 1500 employees are considered to be small. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Information available indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

38. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

39. *Open Video Services*. Open Video Service (OVS) systems provide subscription services. *See* 47 U.S.C. section 573. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). This standard has been replaced by the Wireless Telecommunications Carriers (except satellite) standard, which considers firms with fewer than 1,500 employees to be small. NAICS Code 517210. The Commission has certified approximately 100 OVS operators to serve 75 areas, and some of these are currently providing service. *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of June 2004). This data was collected when ''Cable and Other Program Distribution'' was the operative distribution technology. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that

they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that those OVS operators remaining might qualify as small businesses that may be affected by the rules and policies adopted herein.

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

41. *Telephone Companies*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. The Commission estimates that ten LECs currently provide video programming, and several smaller telephone companies provide the service.

42. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under NCAIS rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Feb. 2007). This source uses data that are current as of October 20, 2005. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. The Commission estimates that ten LECs currently provide video programming, and several smaller telephone companies provide the service.

43. *Closed Captioning Services*. These entities are indirectly affected by our action. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, ''Teleproduction and Other Postproduction Services'' and ''Court Reporting and Stenotype Services.''

44. The first category of *Teleproduction and Other Postproduction Services* ''comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects.'' The relevant size standard for small businesses in these services is an annual revenue of less than $29.5 million. U.S. Census Bureau, 2002 NAICS Definitions, ''512191 Teleproduction and Other Postproduction Services''; *http://www.census.gov/epcd/naics02/def/NDEF512.HTM*. The size standard is $29.5 million. For this category, Census Bureau data for 2002 show that there were 1,316 firms that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 512191 (issued Nov. 2005). Of this total, 1,301 firms had annual receipts of under $25 million, and 10 firms had receipts of $25 million to $49,999,999. An additional 5 firms had annual receipts of $50 million or more. Consequently, we estimate that the majority of *Teleproduction and Other Postproduction Services* firms are small entities that might be affected by our action.

45. The second category of *Court Reporting and Stenotype Services* ''comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials.'' The size standard for small businesses in these services is an annual revenue of less than $7 million. U.S. Census Bureau, 2002 NAICS Definitions, ''561492 Court Reporting and Stenotype Services''; *http://www.census.gov/epcd/naics02/def/NDEF561.HTM*. The size standard is $7 million. For this category, Census Bureau data for 2002 show that there were 2,487 firms that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Administrative and Support and Waste Management and Remediation Services, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 561492 (issued Nov. 2005). Of this total, 2,461 firms had annual receipts of under $5 million, and 16 firms had receipts of $5 million to $9,999,999. An additional 10 firms had annual receipts of $10 million or more. Consequently, we estimate that the majority of *Court Reporting and Stenotype Services* firms are small entities that might be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

46. The *Order* revises the Commission's rules to allow complaints concerning an alleged violation of the closed captioning requirements to be filed with the Commission or with the video programming distributor responsible for delivery and exhibition of the video programming within sixty (60) days of the problem with captioning. The *Order* requires that complaints that are filed first with the Commission will be forwarded to the appropriate video programming distributor, and the video programming distributor must respond in writing to the Commission and the complainant within 30 days of the receipt of the complaint from the Commission. The *Order* also requires that, when a complaint is sent to a video programming distributor regarding programming by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning

responsibility pursuant to § 79.1(e)(9) of the Commission's rules, the video programming distributor shall forward such complaint within seven (7) days of receipt to the entity responsible for closed captioning of the programming at issue. The *Order* requires that the video programming distributor must also notify the complainant and the Commission that it has forwarded the complaint. The *Order* requires that entities receiving forwarded complaints must respond in writing to the complainant within 30 days of the forwarding date of the complaint. The *Order* requires that, if the complaint is filed first with the video programming distributor, and the video programming distributor fails to respond to it within 30 days or a dispute remains following the initial complaint resolution procedures, a complaint may be filed with the Commission within 30 days after the time allotted for the video programming distributor to respond has ended. The *Order* requires that video programming distributors shall respond to the Commission and the complainant within 30 days of receipt of a complaint from the Commission.

47. The *Order* also adopts provisions requiring that video programming distributors make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program, as well as contact information for the receipt and handling of written closed captioning complaints that do not raise immediate issues. The *Order* requires that programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. Video programming distributors should ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. The *Order* requires that, to the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, the *Order* requires that, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. The *Order* requires that, in situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. The *Order* requires that, in those situations where the captioning problem does not reside with the distributor, the staff person receiving the inquiry should refer the matter appropriately for resolution.

48. As noted, the *Order* requires video programming distributors to make contact information available for the receipt and handling of written closed captioning complaints, and this information shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with the rules, as well as the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. The *Order* requires that distributors include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements), and that distributors keep this information current and update it within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

49. The *Order* requires video programming distributors to file the contact information noted above with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or by sending the information to *CLOSEDCAPTIONING_POC@fcc.gov*. The *Order* requires the Commission staff to prepare a Public Notice advising consumers and other interested parties how to obtain access to the contact information, once it has been compiled and posted on the FCC's Web site. The *Order* requires that this information also be available by telephone inquiry to the Commission's Consumer Center. Distributors shall notify the Commission each time there is a change in any of this required information within 10 business days.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

50. 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' 5 U.S.C. 603(c)(1)–(4).

51. In amending the closed captioning rules, the Commission believes that it has minimized the effect on small entities while making video programming more accessible to persons with hearing disabilities. These efforts are consistent with the Congressional goal of increasing the availability of captioned programming while preserving the diversity of available programming. For instance, in revising the complaint process, the Commission has decreased the timeframes for filing complaints and responding to complaints. This change in filing time periods reasonably accommodates concerns by viewers that the current complaint process allows too much time to pass before a complaint must be addressed and concerns by distributors that they be allowed sufficient time to address captioning problems. Although the Commission considered retaining the former rule, pursuant to which complaints were filed first with the distributor, the dual approach adopted by the *Order* will enhance the complaint process. In addition, the *Order* contains an optional complaint form (FCC Form 2000–C) to assist consumers in the filing of complaints. *Order* at Appendix B. The information requested on the form will facilitate a more efficient complaint process for both complainants and distributors.

52. By requiring that video programming distributors provide contact information in bills, directories, on Web sites (if they have Web sites) and by sending this information to the Commission for placement on the Commission's Web site, the *Order* seeks to remedy concerns by consumers who report confusion about whom to contact about closed captioning concerns and dissatisfaction with the responsiveness of the video programming distributors. The *Order* does not require that distributors create Web sites specifically for the purpose of providing contact information.

53. The *Order* does not require that distributors alter their hours of operation or the hours during which they have staffing available. The *Order* only requires that, where staff is available to address technical issues that

may arise during the course of transmitting programming, the staff must be knowledgeable about and be able to address closed captioning concerns. The *Order* also reminds video programming distributors of the importance of making their organizations accessible to persons with hearing disabilities seeking information about the entity's closed captioning or other matters. As such the *Order* expresses the Commission's expectation that all video programming distributors take measures to readily accommodate incoming calls placed through Telecommunications Relay Service (TRS). In situations where a distributor is not immediately available, any calls or inquiries received, using the dedicated contact information described in the *Order*, should be returned or otherwise addressed within 24 hours.

54. The economic burdens associated with the changes to the closed captioning rules adopted in the *Order* are minimal. The benefits of revising the complaint process, requiring that contact information be available to consumers and requiring that distributors have personnel able to address captioning problems when they are available to address other technical problems outweigh any slight burdens these requirements may impose. Furthermore, there are several provisions of the closed captioning rules that were adopted in 1997 that are intended to address concerns of small businesses. These 1997 provisions are not affected by the *Order*, nor were they addressed in the *2005 Closed Captioning NPRM*. These provisions are intended to provide relief to small businesses who may find closed captioning to be unduly burdensome, and bear mentioning in this FRFA. For instance, the existing closed captioning rules contain several self-implementing exemptions that factor the costs of captioning and/or the financial status of distributors into a determination of whether the entity is exempt from the captioning requirements. The *Order* does not alter the existing exemption that excuses a video programming provider from spending more than 2 percent of its annual gross revenues received from a channel on closed captioning (§ 79.1(d)(11) of the Commission's rules), nor does the *Order* alter the current provision in the rules that exempts video programming providers from closed captioning where the distributor's annual gross revenues for the channel did not exceed $3 million for the previous calendar year (§ 79.1(d)(12) of the Commission's rules). Both of these previously adopted provisions were intended to address the problems of small video programming providers that are not in a position to devote significant resources toward closed captioning. These exemptions relieve small entities of any burdensome obligation to provide closed captioning without significantly reducing the availability of captioning.

55. In addition, another provision in the current rules allows the Commission to grant exemptions to the rules where a petitioner has shown it would be an undue burden (*i.e.*, significant difficulty or hardship) to close caption (§ 79.1(f) of the Commission's rules). This mechanism allows the Commission to address the impact of these rules on individual entities and modify the rules to accommodate individual circumstances. The procedures in § 79.1(f) of the Commission's rules were specifically designed to ameliorate the impact of the closed captioning rules in a manner consistent with the objective of increasing the availability of captioned programming.

Congressional Review Act

The Commission will send a copy of the *Declaratory Ruling* and *Order* and, including this FRFA, in a report to be sent to Congress and the U.S. Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Declaratory Ruling* and *Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

Pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613, the *2008 Digital Closed Captioning Declaratory Ruling and Order is adopted* and the Commission's Rules *are hereby amended* as set forth herein.

The *2008 Digital Closed Captioning Declaratory Ruling and Order shall be effective* February 12, 2009, except with regard to the information collection requirements contained in new rule § 79.1(i) and § 79.1(g)(1) through (5), which will become effective upon publication in the **Federal Register** of notice of approval by the Office of Management and Budget of the information collections, and, with respect to § 79.1(i), with which distributors must comply within 30 days thereafter.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *2008 Digital Closed Captioning Declaratory Ruling and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 79

Cable television operators, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the Preamble, the Federal Communications Commission amends 47 CFR Part 79 to read as follows:

PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

■ 1. The authority citation for Part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

■ 2. Section 79.1 is amended by adding paragraphs (a)(5)(i) and (ii), by revising paragraphs (a)(6)(i) and (ii), and (g)(1) through (5) and by adding paragraph (i) to read as follows:

§ 79.1 Closed captioning of video programming.

(a) * * *

(5) * * *

(i) Analog video programming that is first published or exhibited on or after January 1, 1998.

(ii) Digital video programming that is first published or exhibited on or after July 1, 2002.

(6) * * *

(i) Analog video programming that was first published or exhibited before January 1, 1998.

(ii) Digital video programming that was first published or exhibited before July 1, 2002.

* * * * *

(g) * * *

(1) Complaints concerning an alleged violation of the closed captioning requirements of this section shall be filed with the Commission or with the video programming distributor responsible for delivery and exhibition of the video programming within sixty (60) days of the problem with captioning. A complaint must be in writing, must state with specificity the alleged Commission rule violated and must include some evidence of the alleged rule violation.

(2) Complaints filed first with the Commission will be forwarded to the

appropriate video programming distributor. The video programming distributor must respond in writing to the Commission and the complainant within 30 days of the receipt of the complaint from the Commission.

(3) Complaints sent to a video programming distributor regarding programming by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning responsibility pursuant to paragraph (e)(9) of this section, shall be forwarded by the video programming distributor within seven (7) days of receipt to the entity responsible for closed captioning of the programming at issue. The video programming distributor must also notify the complainant and the Commission that it has forwarded the complaint. Entities receiving forwarded complaints must respond in writing to the complainant within 30 days of the forwarding date of the complaint.

(4) If a complaint is first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor fails to respond to the complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the video programming distributor to respond. If a consumer re-files the complaint with the Commission (after filing with the distributor), the Commission will forward the complaint to the distributor, and the distributor shall respond to the Commission and the complainant within thirty (30) days of receipt of the complaint from the Commission.

(5) In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules.

* * * * *

(i) *Contact information.* (1) Video programming distributors shall make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program. Programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. Video programming distributors should ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. To the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. In situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. In those situations where the captioning problem does not reside with the distributor, the staff person receiving the inquiry should refer the matter appropriately for resolution.

(2) Video programming distributors shall make contact information available for the receipt and handling of written closed captioning complaints that do not raise the type of immediate issues that are addressed in paragraph (i)(1) of this section. The contact information required for written complaints shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with our rules. In addition, this contact information shall include the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. Distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Distributors shall keep this information current and update it within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

(3) Video programming distributors shall file the contact information described in this section with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or by sending the information to *CLOSEDCAPTIONING_POC@fcc.gov.* After compiling and posting the list on the FCC's Web site, Commission staff shall prepare a Public Notice advising consumers and other interested parties how to obtain access to the contact information. This information shall also be available by telephone inquiry to the Commission's Consumer Center. Distributors shall notify the Commission each time there is a change in any of this required information within 10 business days.

[FR Doc. E8–31447 Filed 1–12–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA–2008–0158]

Policy on the Safety of Railroad Bridges

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to Final Statement of Agency Policy.

SUMMARY: FRA is amending its statement of agency policy on the safety of railroad bridges. The policy outlines suggested criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks. This amendment adds provisions that will guide railroads in developing their own implementing programs that will ensure conformity with the provisions of this policy.

DATES: *Effective Date:* This amendment to the statement of policy is effective February 12, 2009.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (Telephone: 202–493–6320), or Sarah Grimmer Yurasko, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6047).

SUPPLEMENTARY INFORMATION: FRA published its ''Statement of Agency Policy on the Safety of Railroad Bridges'' (''Policy'') on August 30, 2000 (65 FR 52667). The Policy Statement, included in the Federal Track Safety Standards (Title 49, Code of Federal Regulations, Part 213) as Appendix C, includes non-regulatory guidelines based on good practices which were prevalent in the railroad industry at the time the Policy was issued. This notice amends those guidelines by