

application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to the ACHD's control of PM emissions from OWBs, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 16, 2014.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2014-18493 Filed 8-4-14; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

[MB Docket No. 11-154; FCC 14-97]

#### Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on issues related to closed captioning of video clips delivered using Internet protocol ("IP"). The Commission explores application of the IP closed captioning rules for video clips to third party distributors not currently subject to the new video clips requirements. The Commission also asks whether it should decrease or eliminate the grace periods within which IP-delivered video clips of video programming previously shown live or near-live on television must be captioned. Further, the Commission invites comment on application of the

IP closed captioning requirements to two additional categories of video clips, which are called "mash-ups" and "advance" video clips.

**DATES:** Comments are due on or before October 6, 2014; reply comments are due on or before November 3, 2014.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 11-154, 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: [fjallfoss.fcc.gov/ecfs2/](http://fjallfoss.fcc.gov/ecfs2/). Follow the instructions for submitting comments.
- Mail: 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.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking (2nd FNPRM)*, FCC 14-97, adopted on July 11, 2014 and released on July 14, 2014. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202)

418-0530 (voice), (202) 418-0432 (TTY).

This *2nd FNPRM* seeks comment on a potential new or revised information collection requirement. If the Commission adopts a new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

### Synopsis

#### I. Introduction

1. In the Second Order on Reconsideration ("*Video Clips Order*"), the Commission concludes that clips of video programming covered by the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") must be captioned when delivered using Internet protocol ("IP") and adopts rules in that regard. The attached *2nd FNPRM* explores the following four issues related to closed captioning of IP-delivered video clips:

- Application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors;
- Whether in the future we should decrease or eliminate the 12-hour timeframe within which IP-delivered video clips of video programming previously shown live on television must be captioned and the eight-hour timeframe within which IP-delivered video clips of video programming previously shown near-live on television must be captioned;
- Application of the IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions and online-only content that has not ("mash-ups"); and
- Application of the IP closed captioning rules to video clips that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions ("advance" video clips).

## II. Second Further Notice of Proposed Rulemaking

2. In the following *2nd FNPRM* we explore four issues related to closed captioning of IP-delivered video clips: (1) Application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors, when the associated video programming has been shown on television with captions; (2) whether in the future we should decrease or eliminate the 12-hour timeframe within which captions may be added to IP-delivered video clips of live programming and the eight-hour timeframe within which captions may be added to IP-delivered video clips of near-live programming; (3) application of the IP closed captioning requirements to files that contain a combination of video clips that have been shown on television with captions and online-only content (“mash-ups”); and (4) application of the IP closed captioning rules to video clips that are first added to the video programming distributor’s or provider’s library on or after January 1, 2016 for straight lift clips or January 1, 2017 for montages, but before the associated video programming is shown on television with captions, and which then remain online in the distributor’s or provider’s library after being shown on television.

### A. Third Party Video Programming Providers and Distributors

3. Entities such as news Web sites that do not distribute full-length video programming may sometimes make video clips available on their Web sites. In addition, some entities, such as Hulu, may distribute full-length video programming online but do not also distribute such programming on television. We do not have an adequate record for purposes of applying the IP closed captioning rules to the provision of video clips by these and similar entities, which we refer to as “third party” distributors.<sup>1</sup> Accordingly, we seek comment on the scope of third party IP distribution of video clips that were taken from video programming shown on television with captions, the

<sup>1</sup> The *Video Clips Order* imposes closed captioning requirements for IP-delivered video clips, at the present time, to instances in which the video programming provider or distributor (as those terms are defined in the IP closed captioning rules) posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United States with captions on or after the applicable compliance deadline. References herein to “third party” distributors should be read to include all video programming providers and distributors not subject to the *Video Clips Order* as a result of this limitation.

relationship between such third parties and the video programming owner, and the costs and benefits of imposing the obligation to caption video clips on such entities, including small entities.

4. We seek comment on the third parties that distribute video clips of video programming shown on television with captions. What types of entities are included in this category, and how many such entities exist? We request information on the relationship between these third parties and video programming owners. Do the third parties receive video clips directly from the video programming owner, or do they receive video clips for IP distribution in a different manner? What licensing or other agreements exist between video programming owners and these third party video programming providers and distributors with regard to IP-delivered video clips? Do video programming owners sometimes lack knowledge that third parties are distributing their video clips via IP, and in what circumstances might that occur? Should any rules covering third party distributors be limited to those distributors that have a licensing or other formal agreement with the video programming owner?

5. How should we ensure that video clips taken from programming shown on television are successfully captioned by third party distributors on a timely basis? For example, the general IP closed captioning rules that apply to full-length programming require video programming owners to send program files to video programming distributors and providers with required captions, and they require video programming providers and distributors to enable the rendering or pass through of all required captions to the end user. Should we impose this allocation of responsibility for IP-delivered video clips when the video programming provider or distributor did not also publish or exhibit the associated video programming on television? Should we impose the general IP closed captioning rules in this context, or should we impose any differing obligations? For example, the IP closed captioning rules require each video programming owner to agree “[w]ith each video programming distributor and provider that such owner licenses to distribute video programming directly to the end user through a distribution method that uses Internet protocol . . . upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.”<sup>2</sup>

<sup>2</sup> 47 CFR 79.4(c)(1)(ii).

How would this “mechanism” operate in the context of video clips covered by these rules when they are provided to third party IP distributors? How will third party video programming providers and distributors be informed that a video clip already in their library has been shown on television with captions? Will the video programming owner always know that a video clip previously shown as part of television programming has been posted online and by whom? How should this impact enforcement, if at all?

6. If video clips are initially posted online by a third party distributor without captions and later amended to include captions, will links to the original posting of the video clip still work? What other technical, legal or other issues should we be aware of that may impact the ability of third party video programming distributors to comply with our IP closed captioning requirements, and how quickly can they be addressed? We seek comment on what would be an appropriate compliance period. We also seek comment on what obligations, if any, should be different when a third party distributor embeds instead of hosts the content on its Web site.<sup>3</sup>

7. We seek comment on our statutory authority over video clips provided by third party distributors. As explained in the *Video Clips Order* (published concurrently with this *2nd FNPRM* in the **Federal Register**), the CVAA requires that any IP-delivered video programming that was shown on television with captions, whether full-length or an excerpt, must also be captioned when delivered using IP. What requirements do we need to impose in the context of third party distributors to ensure that we are fulfilling the requirements and goals of the CVAA, which directs the Commission to require “the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations”?<sup>4</sup> Do any statutory exemptions apply in this context? For example, should the Commission exempt any third party video programming distributors or categories of distributors from its video

<sup>3</sup> When a third party video programming distributor “embeds” a video clip, it is directing the consumer’s browser or video player to display a video that is currently hosted on another video programming distributor’s platform. When a third party video programming distributor “hosts” a video clip, it is both directing the consumer’s browser or video player to display the video and providing the video file itself.

<sup>4</sup> 47 U.S.C. 613(c)(2)(A).

clips captioning obligations on the basis that it would be “economically burdensome” for these distributors to comply?<sup>5</sup> If so, parties should provide specific reasons for why the economic burden exemption should apply.<sup>6</sup> If adopted, should such categorical exemption expire after a set period of time, subject to renewal if warranted?

#### B. Grace Period for Live and Near-Live Video Clips

8. As explained in the *Video Clips Order*, beginning July 1, 2017 we require the provision of closed captions on IP-delivered video clips of video programming previously shown live or near-live on television with captions within 12 hours and eight hours, respectively, after the associated video programming is published or exhibited on television in the United States with captions. Herein we seek comment on whether in the future we should decrease or eliminate this grace period for providing captions. We seek comment on the costs of imposing a shorter grace period on covered entities, including small entities, in comparison to the benefits to consumers of a reduced grace period.

9. We remain concerned about the impact that delayed access to IP-delivered video clips of live and near-live programming will have on people who are deaf and hard of hearing. For example, breaking news aired live on television and initially posted online without closed captions effectively excludes these individuals from having timely access to this information. We seek comment on the impact that these delays will have on people who are deaf and hard of hearing and whether continuing to allow these delays is consistent with Congress’s intent, as expressed in the CVAA, to improve

<sup>5</sup> 47 U.S.C. 613(c)(2)(D)(ii) (the regulations “may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment”).

<sup>6</sup> *Closed Captioning and Video Description of Video Programming*, Report and Order, 13 FCC Rcd 3272, 3342, paras. 143–145 (1997) (setting forth the Commission’s treatment of class exemptions); *See Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14958–60, paras. 33–36 (2011) (explaining the different application of the term “economically burdensome” to case-by-case exemptions than to rulemaking decisions to exempt certain categories of programming); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787, 828, para. 67 (2012) (“*IP Closed Captioning Order*”) (also noting the distinction between the Commission’s treatment of these two types of captioning exemptions).

access to video programming delivered via the Internet. We also expect that, at some time in the future, it will be appropriate to decrease or eliminate this grace period because we expect that technology will automate the process such that a grace period is no longer needed. We invite comment on the timeframe within which we should decrease or eliminate the grace period applicable to video clips of live and near-live programming. For example, for video clips of live programming, should we provide a grace period of six hours beginning July 1, 2018, and three hours beginning July 1, 2019? What adjustments should we make to the grace period for video clips of near-live programming? We ask commenters to justify any differing treatment of video clips of live programming and video clips of near-live programming. We also ask industry to submit specific comment on the status of technological developments in this regard. What steps must industry currently take to prepare captioned video clips of live and near-live programming, and how and when might those steps be streamlined in the future? To the extent that these delays can be reduced, would it be appropriate to adopt a schedule of deadlines phasing in shorter grace periods, and if so, what should these deadlines be? Would a schedule phasing out these grace periods encourage greater technical innovation to automate these captioning processes, as well as provide the necessary time to achieve compliance?

#### C. Combinations of Video Clips and Content Not Televised With Captions (“Mash-Ups”)

10. We seek comment on the application of the IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions, and other content (such as online-only content) that has not been shown on television with captions. The industry refers to these files as “mash-ups.” We seek comment on the costs to covered entities, including small entities, and the benefits of applying the IP closed captioning requirements to mash-ups. We seek additional information on issues associated with the captioning of the portion of the clip that was shown on television with captions. We recognize that any part of the video clip that was not shown on television with captions, such as online-only content, would not be subject to the IP closed captioning requirements.

11. As explained in the *Video Clips Order*, the CVAA requires that any IP-delivered video programming that was

shown on television with captions, whether full-length or an excerpt, must also be captioned when delivered using IP. Is there any statutory basis on which we could exclude from the IP closed captioning requirements video clips embedded in mash-ups if the embedded clips were shown on television with captions? We seek comment on whether this type of clip is subject to any of the exemptions set forth in section 202 of the CVAA. For example, if the clips that were shown on television with captions were very short or insignificant in comparison to the rest of the mash-up that contains online-only content, would the lack of captions be considered a “de minimis” failure to comply under section 202? If so, how would the Commission be able to determine what is a “de minimis” situation versus one where lack of captions is considered a violation of our regulations? That is, what would constitute an insignificant or short enough clip sufficient to invoke the “de minimis” exemption? Alternatively, should the Commission exempt the class of “mash-ups” from its IP closed captioning rules on the basis that it would be “economically burdensome” for the provider of such clip to comply with our rules?<sup>7</sup> If adopted, should such categorical exemption expire after a set period of time, subject to renewal if warranted? Parties should provide specific comment on why the Commission’s economic burden test would apply in this situation and how the Commission should apply this test to this class exemption, if adopted. Is there any other basis on which the Commission can exclude an otherwise covered video clip from the IP closed captioning rules, consistent with the CVAA’s direction that the Commission “require the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date”?<sup>8</sup> For example, if an online program itself was not shown on television with captions, but rather only isolated clips embedded in the program were, does that render the program in its entirety (including integrated clips of televised captioned programming) outside the scope of the CVAA on the theory that the whole program is a new work that does not constitute “video

<sup>7</sup> 47 U.S.C. 613(c)(2)(D)(ii) (the regulations “may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment”).

<sup>8</sup> *See* 47 U.S.C. 613(c)(2)(A).

programming . . . that was published or exhibited on television with captions”?

12. We seek comment on the nature of these types of integrated clips. Industry should give us specific examples of such clips and describe how prevalent they are. If the Commission applies the IP closed captioning requirements to one or more video clips that have been shown on television with captions, regardless of whether these clips are integrated with other content (such as online-only content) that has not been shown on television with captions, how will industry comply with such a requirement? That is, we seek comment on the technical challenges associated with captioning such clips. Will industry need to caption the covered material anew, or will it be able to repurpose televised captions? What would be an appropriate compliance deadline for captioning of covered clips included in mash-ups? Would video programming providers and distributors need a grace period for captioning the covered clips in mash-ups following the airing of the associated video programming on television with captions and, if so, what grace period would be appropriate?

#### D. Advance Video Clips

13. As stated in the *Video Clips Order*, we find that further information on the technological challenges of captioning advance video clips would be useful before we proceed with requiring closed captioning for such clips. Accordingly, we invite comment on application of the IP closed captioning rules to advance video clips. “Advance” video clips are video clips that are added to the video programming distributor’s or provider’s library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, when the associated video programming (including the advance video clips) is later shown on television with captions on or after the compliance deadline and the advance video clips remain online.<sup>9</sup> We defer application of the IP closed captioning requirements to advance video clips pending resolution of this issue. We seek comment on the costs to covered entities, including small entities, and the benefits of captioning advance video clips.

14. We understand that video programming distributors and providers

sometimes add video clips to their libraries shortly before the associated video programming is shown on television with captions, and we think it is important that IP-delivered advance video clips be made accessible to consumers who are deaf or hard of hearing once the programming associated with such clips has been shown on television with captions. For example, if a broadcast television station places a clip filmed on location earlier in the day on its Web site shortly before the station’s nightly news program, and then the clip is shown on television with captions as part of the program, we are concerned that consumers who are deaf or hard of hearing would not have access to the content of the clip if it remains uncaptioned online.<sup>10</sup> Accordingly, we ask whether we should provide a timeframe within which closed captions may be added to IP-delivered advance video clips, once the associated video programming is shown on television with captions. For example, would 24 hours be an appropriate timeframe for the grace period? If not, what timeframe would balance consumers’ desire for prompt access to IP-delivered advance video clips and industry’s need for time to identify and provide captions on IP-delivered advance video clips? Should we adopt an initial timeframe for the grace period, and then decrease or eliminate it over time, in recognition of the expectation that technology will automate the process such that a grace period will no longer be needed? What compliance deadline should we impose for advance clips? We note that in the *IP Closed Captioning Order* (77 FR 19480, Mar. 30, 2012), the Commission gave entities a phased-in timeframe for compliance with respect to the captioning of full-length programming that is in the video programming provider or distributor’s online library before it is shown on television with captions. Should a similar approach be adopted here? What is the scope of the advance clips under consideration? For example, should the scope include all advance clips, or should it be limited to clips posted online within a certain timeframe, such as seven days, before the associated video programming is shown on television? How would any such limitation be consistent with the CVAA? For what time period should video programming owners, providers,

and distributors be required to monitor the posting of the advance clip online and the associated video programming on television? If a commenter proposes a period of time, we seek additional comment on the justification for such proposal, including the costs to industry and the benefits to consumers, including consumers who are deaf or hard of hearing.

15. What is the nature and extent of the difficulties associated with captioning advance clips after their associated video programming has been shown on television with captions? To what extent and for how long does the industry expect that these technological challenges will continue to hinder captioning this category of IP-delivered video clips? In the *IP Closed Captioning Order*, the Commission required closed captioning of full-length video programming that is in the provider’s or distributor’s library before it is shown on television with captions, but it extended the deadlines applicable to such programming in recognition of the need to develop processes for finding and adding captions to this category of programming.<sup>11</sup> How should the Commission justify any differing treatment of advance IP-delivered video clips? Are any differences in treatment justified by Hulu’s assertion that “clips have a shorter shelf life for viewership than long-form content,” or are Consumer Groups correct that many video clips “are likely to live on the Internet indefinitely”? For purposes of quantifying the burden and difficulty in captioning such clips after they appear on television with captions after the applicable deadline, we seek comment on the likely volume of advance video clips in providers’ online libraries. How would the “mechanism” referenced above apply in the context of such video clips, and how would third party video programming distributors and providers comply with a requirement to caption them? What is the likelihood that a requirement to caption advance video clips will result in the removal of these clips and should that factor into our analysis?

16. Even if advance clips are not excerpts of programs shown on television with captions at the time they are initially posted online, we invite comment on whether their status changes once the associated video programming is shown on television with captions thus triggering the captioning requirement. Are there any

<sup>9</sup> We clarify that, if a video programming distributor or provider posts an advance video clip online, and then re-posts that video clip online after the programming is shown on television with captions on or after the compliance deadline, the reposted version of the clip would not be considered an advance clip since it was not posted before the programming was shown on television with captions.

<sup>10</sup> Accordingly, we disagree with NCTA that “[a]ny rule must exclude these ‘advance’ clips from a captioning obligation, and should leave to the reasonable judgment of the programmers whether the ‘advance clip’ retains value such that replacing it with a captioned version makes sense after the program airs on television with captions.”

<sup>11</sup> Additionally, instead of requiring captions immediately as is otherwise the case, the Commission adopted permissible timeframes between the posting of the program file and updating it to include closed captions.

statutory exemptions that would apply to these clips or to a subset of these clips?<sup>12</sup> How would the costs of compliance with such a captioning requirement for advance clips compare to the benefits to consumers? We ask video programming providers and distributors to provide information on their standard practices for removing video clips previously posted online. Do video clips tend to remain online indefinitely, and if so, why? What aspects of the practices now used to post and maintain clips online would need to be changed to comply with the imposition of closed captioning requirements for advance video clips?

### III. Procedural Matters

#### A. Initial Regulatory Flexibility Analysis

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

1. Need for, and Objectives of, the Second Further Notice of Proposed Rulemaking

18. In the Second Order on Reconsideration attached to the *2nd FNPRM*, as part of the Commission’s continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), the Commission imposes closed captioning requirements on excerpts of video programming, specifically online video clips. In the *2nd FNPRM* attached to that order, the Commission explores the following four issues related to closed captioning of

video clips delivered via Internet protocol (“IP”):

- Application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors;
- Whether in the future we should decrease or eliminate the 12-hour timeframe within which IP-delivered video clips of video programming previously shown live on television must be captioned and the eight-hour timeframe within which IP-delivered video clips of video programming previously shown near-live on television must be captioned;
- Application of the IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions and online-only content that has not (“mash-ups”); and
- Application of the IP closed captioning rules to video clips that are added to the video programming distributor’s or provider’s library on or after January 1, 2016 for straight lift clips<sup>13</sup> and January 1, 2017 for montages,<sup>14</sup> but before the associated video programming is shown on television with captions (“advance” video clips).

#### 2. Legal Basis

19. The proposed action is authorized pursuant to sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613.

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

20. 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 proposed in the *Second Order on Reconsideration*. 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”). Small entities

that may be directly affected by the proposals in the *2nd FNPRM* are those entities that distribute IP-delivered clips of video programming and the owners of such programming. Such small entities may include television broadcasters, multichannel video programming distributors (MVPDs), programmers, and other entities that own or distribute video programming. Below are descriptions of the small entities that may be affected by the rules proposed in the *2nd FNPRM*, including, where feasible, an estimate of the number of such small entities. In addition, because the *2nd FNPRM* considers application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors, and because of the difficulty of identifying all such third party video programming providers and distributors, we seek specific comment on whether such small entities are covered by the categories listed below and, if not, on how to identify and estimate such small entities.

21. *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. First, according to the SBA Office of Advocacy, in 2010, there were 27.9 million small businesses in the United States. 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.” Nationwide, as of 2007, there were approximately 1,621,315 small organizations. 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.” Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, a substantial majority may qualify as “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

22. *Wired Telecommunications Carriers*. The North American Industry Classification System (“NAICS”) defines “Wired Telecommunications Carriers” 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

<sup>12</sup> For example, we note that the statute permits exemptions due to economic burden. See 47 U.S.C. 613(c)(2)(D)(ii) (permitting the Commission’s implementing regulations to “exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment”).

<sup>13</sup> “Straight lift” clips are those that contain a single excerpt of a captioned television program with the same video and audio that was presented on television.

<sup>14</sup> “Montages” contain multiple straight lift clips.

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.” The SBA has developed a small business size standard for wireline firms for the broad economic census category of “Wired Telecommunications Carriers.” Under this category, a wireline business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

23. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

24. *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 rate regulation rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide. According to SNL Kagan, there are 1,258 cable operators. Of this total, all but 10 incumbent cable companies are small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,584 cable systems nationwide. Of this total, 4,012 cable systems have fewer than 20,000

subscribers, and 572 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

25. *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.” 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. Based on available data, we find that all but 10 incumbent cable operators are small under this size standard. 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. 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 to estimate with greater precision the number of cable system operators that would qualify as small cable operators under this definition.

26. *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, 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. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. 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. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each reports 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.

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

28. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows

that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

29. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

30. *Wireless cable systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. 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. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 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.

31. 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. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. 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

2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

32. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

33. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

34. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size

standard, the majority of such businesses can be considered small.

35. *Television Broadcasting.* This economic census category “comprises establishments primarily engaged in broadcasting images together with sound.” The SBA has created the following small business size standard for Television Broadcasting businesses: Those having \$35.5 million or less in annual receipts. Census data for 2007 shows that 2,076 establishments in this category operated for the entire year. Of this total, 1,515 establishments had annual receipts of \$10,000,000 or less, and 561 establishments had annual receipts of more than \$10,000,000. Because the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded \$35.5 million in that year, the majority of such establishments can be considered small under this size standard.

36. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,388 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of \$35.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of television broadcast stations are small entities.

37. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

38. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: “This industry comprises establishments

primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.” The SBA has developed a small business size standard for this category, which is: All such businesses having \$35.5 million or less in annual revenues. Census data for 2007 shows that there were 659 establishments that operated for the entire year. Of that number, 462 operated with annual revenues of fewer than \$10 million, and 197 operated with annual revenues of \$10 million or more. Therefore, under this size standard, the majority of such businesses can be considered small.

39. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.” We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce programming for cable television. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. The SBA has developed a small business size standard for this category, which is: Those having \$30 million or less in annual receipts. Census data for 2007 shows that there were 9,095 firms in this category that operated for the entire year. Of this total, 8,995 firms had annual receipts of fewer than \$25 million, and 43 firms had receipts of \$25 million to \$49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

40. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.” We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms distribute programming for cable

television. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. The SBA has developed a small business size standard for this category, which is: Those having \$29.5 million or less in annual receipts. Census data for 2007 shows that there were 450 firms in this category that operated for the entire year. Of this total, 434 firms had annual receipts of fewer than \$25 million, and 7 firms had receipts of \$25 million to \$49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

41. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.” The SBA has developed a small business size standard for this category, which is: All such businesses having 500 or fewer employees. Census data for 2007 shows that there were 2,705 firms that operated for the entire year. Of this total, 2,682 firms had fewer than 500 employees, and 13 firms had between 500 and 999 employees. Therefore, under this size standard, the majority of such businesses can be considered small.

42. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile



communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year. Of this total, 912 establishments had fewer than 500 employees, and 10 establishments had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

43. *Audio and Video Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.” The SBA has developed a small business size standard for this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that 492 establishments in this category operated for part or all of the entire year. Of this total, 488 establishments had fewer than 500 employees, and three had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

44. *Closed Captioning Services.* These entities may be indirectly affected by our proposed actions. 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.”

45. 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 SBA has developed a small business size standard for this category, which is: Those having \$29.5 million or less in annual receipts. Census data for 2007 indicates that there were 1,605 firms that operated in this category for the entire year. Of this total, 1,587 firms had

annual receipts of fewer than \$25 million, and 9 firms had receipts of \$25 million to \$49,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

46. 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 SBA has developed a small business size standard for this category, which is: Those having \$14 million or less in annual receipts. Census data for 2007 indicates that there were 2,706 firms that operated in this category for the entire year. Of this total, 2,687 had annual receipts of fewer than \$10 million, and 11 firms had receipts of \$10 million to \$24,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

47. *Newspaper Publishers.* The Census Bureau defines this category as follows: “This industry comprises establishments known as newspaper publishers. Establishments in this industry carry out operations necessary for producing and distributing newspapers, including gathering news; writing news columns, feature stories, and editorials; and selling and preparing advertisements.” The SBA has developed a small business size standard for this category, which is: Those having 500 or fewer employees. Census data for 2007 shows that there were 4,852 firms in this category that operated for the entire year. Of this total, 4,771 firms had fewer than 500 employees, and an additional 33 firms had between 500 and 999 employees. Therefore, we estimate that the majority of firms in this category are small entities.

48. *Periodical Publishers.* The Census Bureau defines this category as follows: “This industry comprises establishments known either as magazine publishers or periodical publishers. These establishments carry out the operations necessary for producing and distributing magazines and other periodicals, such as gathering, writing, and editing articles, and selling and preparing advertisements.” The SBA has developed a small business size standard for this category, which is: Those having 500 or fewer employees. Census data for 2007 shows that there were 5,479 firms in this category that operated for the entire year. Of this total, 5,434 firms had fewer than 500 employees, and an additional 25 firms had between 500 and 999 employees. Therefore, we estimate that the majority

of firms in this category are small entities.

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

49. Certain proposals discussed in the *2nd FNPRM* would affect reporting, recordkeeping, or other compliance requirements.

50. The *2nd FNPRM* considers four issues related to the extension of the IP closed captioning requirements to video clips as discussed in the *Video Clips Order*. First, the *2nd FNPRM* seeks comment on application of the IP closed captioning requirements to “third party” video programming providers and distributors, which are those not subject to the *Video Clips Order*.<sup>15</sup> Third party distributors include entities, such as news Web sites, that do not distribute full-length video programming but may sometimes make video clips available on their Web sites. Third party distributors also include entities, such as Hulu, that distribute full-length video programming online but do not also distribute such programming on television. The *2nd FNPRM* asks whether the Commission should impose the general IP closed captioning rules to such third parties, or whether any differing obligations should apply. For example, the IP closed captioning rules require each video programming owner, “[w]ith each video programming distributor and provider that such owner licenses to distribute video programming directly to the end user through a distribution method that uses Internet protocol, [to] agree upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.”<sup>16</sup> The *2nd FNPRM* asks how this “mechanism” would operate in the context of video clips covered by these rules when they are provided to third party IP distributors. Extension of the IP closed captioning requirements for video clips to third party distributors that are small entities will subject these entities to the video clips requirements. Second, the Commission seeks comment on decreasing or eliminating the grace period adopted in the *Video Clips Order* for providing closed captions on IP-delivered video clips of video

<sup>15</sup> The *Video Clips Order* imposes closed captioning requirements for IP-delivered video clips, at the present time, to instances in which the video programming provider or distributor (as those terms are defined in the IP closed captioning rules) posts on its Web site or application a video clip of video programming that it published or exhibited on television in the United States with captions on or after the applicable compliance deadline.

<sup>16</sup> 47 CFR 79.4(c)(1)(ii).

programming previously shown live or near-live on television with captions. Decreasing or eliminating this grace period would require all entities, including smaller entities, to make captions available more quickly for video clips of live and near-live programming. Third, the *2nd FNPRM* asks about application of the Commission's IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions and other content (such as online-only content) that has not been shown on television with captions ("mash-ups"). Extension of the IP closed captioning requirements to mash-ups will require all entities, including small entities, to comply with the requirements for an additional type of video clip. Fourth, the Commission seeks comment on application of the IP closed captioning rules to "advance" video clips, which are those that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions on or after the compliance deadline. Extension of the IP closed captioning requirements to advance video clips also will require all entities, including small entities, to comply with the requirements for an additional type of video clip.

#### 5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

51. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

52. Similar to the rules promulgated in the accompanying *Second Order on Reconsideration* ("Video Clips Order"), the proposals contained in the *2nd FNPRM*, if adopted, could have a significant economic impact on a substantial number of small entities. Although the Commission has considered (and will continue to consider) alternatives, where possible,

to minimize economic impact on small entities, we note that our proposals in the *2nd FNPRM* are governed by the congressional mandate contained in the CVAA. We note that in the *2nd FNPRM*, the Commission seeks comment on the costs and benefits of the proposals on affected entities, including small entities.

53. As explained in the Final Regulatory Flexibility Analysis (FRFA) for the accompanying *Video Clips Order*, as well as the FRFA for the *IP Closed Captioning Order*, we note that the same aspects of the IP closed captioning rules applicable to full-length programming that ease compliance burdens on small entities also apply to small entities in the context of video clips. Specifically, in the *IP Closed Captioning Order*, the Commission adopted procedures enabling it to grant exemptions to the rules governing closed captioning of IP-delivered video programming pursuant to section 202 of the CVAA, where a petitioner has shown that compliance would present an economic burden (*i.e.*, a significant difficulty or expense), and pursuant to section 203 of the CVAA, where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense) or not technically feasible. As was the case with regard to full-length programming, this exemption process will allow the Commission to address the impact of any rule revisions resulting from the *2nd FNPRM* on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, as with full-length IP-delivered video programming, a *de minimis* failure to comply with the requirements adopted pursuant to section 202 of the CVAA with regard to IP-delivered video clips will not be treated as a violation, and parties may continue to use alternate means of compliance to the rules adopted pursuant to either section 202 or section 203 of the CVAA. Individual entities, including smaller entities, may benefit from these provisions.

54. The *2nd FNPRM* itself also reflects our consideration of small entities and significant alternatives. First, the *2nd FNPRM* seeks comment on what types of entities are included in the category of third parties that distribute video clips of programming shown on television with captions. The Commission also asks if it should impose general IP closed captioning rules in the context of such third parties, or if it should impose different obligations. These concerns will allow

the Commission to look into the impact of the requirements on smaller entities and to explore alternatives. For example, the Commission will consider whether the closed captioning requirements for video clips should apply to all third party distributors, or whether comments demonstrate that the application to certain small third party distributors would be economically burdensome.

55. Second, the *2nd FNPRM* seeks comment on decreasing or eliminating the grace period applicable to captions of IP-delivered video clips of live and near-live programming. Specifically, beginning July 1, 2017, the Commission requires the provision of closed captions on IP-delivered video clips of video programming previously shown live or near-live on television with captions within 12 hours (for live) or eight hours (for near-live) after the associated video programming is published or exhibited on television in the United States with captions. The Commission expects that at some time in the future, technology will automate the process such that the grace period for captioning is no longer needed. The Commission seeks comment on the status of technological developments in this regard and the current process through which entities prepare video clips of live and near-live programming. This information will allow the Commission to consider the impact of decreasing or eliminating the grace period on all covered entities, including small entities. The Commission thus will determine whether it should decrease or eliminate the grace period, and it will consider comments submitted about the impact of doing so on small entities.

56. Third, the *2nd FNPRM* seeks comment on applying the IP closed captioning requirements to files that contain a combination of one or more video clips that have been televised with captions and other content (such as online-only content) that has not been shown on television with captions ("mash-ups"). The Commission asks how the industry would comply with such a requirement and whether it will need to caption the covered material anew or simply repurpose televised captions. Thus, the Commission will continue to consider the impact of its rules on covered entities, including small entities, in adopting any rule revisions. A captioning requirement for mash-ups will require all entities, including smaller entities, to caption an additional category of video clips.

57. Fourth, the *2nd FNPRM* seeks comment on applying the IP closed captioning rules to "advance" video clips, which are those that are added to

the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions on or after the compliance deadline. The Commission seeks comment on the difficulties associated with a captioning requirement for this category of video clips, including whether any statutory exemptions might apply to these clips or to a subset of these clips. The information provided in response will facilitate the Commission's consideration of the impact of application of the IP closed captioning rules to this category of video clips on covered entities, including small entities.

#### 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

58. None.

#### B. Paperwork Reduction Act

59. The 2nd FNPRM may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### C. Ex Parte Rules

60. *Permit-But-Disclose*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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 § 1.1206(b). In proceedings governed by § e 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### D. Filing Requirements

61. *Comments and Replies*. 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 who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325,

Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

#### 62. Availability of Documents.

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

63. *People with Disabilities*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### E. Additional Information

64. For additional information on this proceeding, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

## IV. Ordering Clauses

65. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613, this *Second Further Notice of Proposed Rulemaking is adopted*.

66. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking* in MB Docket No. 11-154, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

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