

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

In the Matter of	)	
	)	
Travelers’ Information Stations;	)	PS Docket No. 09-19
	)	
American Association of Information Radio Operators Petition for Ruling on Travelers’ Information Station Rules;	)	
	)	
Highway Information Systems, Inc. Petition for Rulemaking;	)	RM-11514
	)	
American Association of State Highway and Transportation Officials Petition for Rulemaking	)	RM-11531

**REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING**

**Adopted: July 18, 2013**

**Released: July 23, 2013**

**Comment Date:** [30 days after date of publication in the Federal Register]

**Reply Comment Date:** [45 days after date of publication in the Federal Register]

By the Commission:

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## I. INTRODUCTION

1. Currently, the Commission authorizes Public Safety Pool-eligible entities to use Travelers' Information Stations (TIS) to transmit noncommercial, travel-related information over AM band frequencies to motorists on a localized basis.<sup>1</sup> In this proceeding, we address the scope of permissible operations under our TIS rules<sup>2</sup> in response to petitions filed by Highway Information Systems (HIS), the American Association of Information Radio Operators (AAIRO), and the American Association of State Highway and Transportation Officials (AASHTO).<sup>3</sup> The Commission invited comment on the issues raised in these three petitions in a *Notice of Proposed Rulemaking* adopted in 2010.<sup>4</sup>

2. In today's *Report and Order*, we both clarify and amend our TIS rules in order to promote a more efficient and effective service. First, we clarify that permissible content under the TIS rules must continue to have a nexus to travel, an emergency, or an imminent threat of danger. Second, we amend Section 90.242 of our rules, which defines and authorizes TIS, to cross-reference Sections 90.405(a)(1) and 90.407 of the rules,<sup>5</sup> which respectively allow the use of all Part 90 facilities, including TIS, for the transmission of "any communications related directly to the imminent safety-of-life or property," and for emergency communications "during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster."<sup>6</sup> Third, we partially remove the present restriction on so-called "ribbon" networks of TIS transmitters (*i.e.*, multiple simulcast transmitters), requiring only that simulcast TIS transmissions be relevant to travelers in the vicinity of each transmitter in the network. Finally, we update the definition of TIS in Section 90.7 to replace the reference to the former Local Government Radio Service with a reference to the Public Safety Pool.<sup>7</sup>

3. The rule changes in the *Report and Order* serve either to clarify or to modestly expand the operating parameters of the TIS service. The costs associated with these rule changes are negligible because the changes impose no investment or expenditure requirements on any affected entities to

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<sup>1</sup> The Commission adopted the TIS rules in 1977. *See* Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, *Report and Order*, 67 F.C.C.2d 917 (1977) (*TIS Report and Order*). As discussed further below, TIS preceded the creation of the Public Safety Pool; until then the Commission licensed TIS to one of the precursor components of this Pool – *i.e.*, entities in the Local Government Radio Service.

<sup>2</sup> *See* 47 C.F.R. § 90.242.

<sup>3</sup> *See* Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules of Highway Information Systems, Inc. (filed July 16, 2008) (HIS Petition); Travelers' Information Service Provision of Localized Public Safety and Emergency Information Pursuant to 47 C.F.R. Sections 90.242 and 90.407, Petition for Ruling (filed Sep. 9, 2008) (AAIRO Petition); Petition for Rule Making of the American Association of State Highway and Transportation Officials (filed March 16, 2009) at 1 (AASHTO Petition).

<sup>4</sup> *See* Travelers Information Stations, PS Docket No. 09-19, American Association of Information Radio Operators Petition for Ruling on Travelers' Information Station Rules, Highway Information Systems, Inc. Petition for Rulemaking, RM-11514, American Association of State Highway and Transportation Officials Petition for Rulemaking, RM-11531, *Order and Notice of Proposed Rulemaking*, 25 FCC Rcd 18117 (2010) (*NPRM*).

<sup>5</sup> *See* 47 C.F.R. §§ 90.405(a)(1) and 90.407.

<sup>6</sup> *Id.*

<sup>7</sup> *See* 47 C.F.R. § 90.7.

achieve compliance. The rule changes will also remove confusion about what type of content is permissible on the TIS, thus improving administrative efficiency for the both the Commission and TIS licensees. Moreover, by permitting the simulcasting of TIS transmissions, the rule changes will lower licensees' operating costs because licensees will no longer need to create individual TIS transmissions for each transmitter in a network.

4. In the attached *Further Notice of Proposed Rulemaking (FNPRM)*, we propose to delete Section 90.242(b)(8) of the Commission's rules, which requires the filtering of TIS audio frequencies above 3 kHz.<sup>8</sup> The record indicates that the filtering requirement significantly decreases the audibility of TIS broadcasts while adding little to the interference protection of commercial broadcasters. However, because the Commission did not specifically address the filtering issue in the initial *NPRM* in this docket,<sup>9</sup> we request comment on this proposed rule change.

## II. BACKGROUND

5. The Commission established TIS in 1977 in order to "establish an efficient means of communicating certain kinds of information to travelers over low power radio transmitters licensed to Local Government entities."<sup>10</sup> The Commission specifically noted that such stations had been used to reduce traffic congestion and to transmit "road conditions, travel restrictions, and weather forecasts to motorists."<sup>11</sup> Further, the Commission anticipated that TIS also would be used to "transmit travel related emergency messages concerning natural disasters (*e.g.*, forest fires, floods, etc.), traffic accidents and hazards, and related bulletins affecting the immediate welfare of citizens."<sup>12</sup>

6. Commercial broadcasters opposed the creation of TIS, claiming that it would duplicate information provided by commercial broadcasts, including "comprehensive weather reports, reports of traffic conditions, names of gasoline stations, restaurants, and lodging conveyed through advertising."<sup>13</sup> Some broadcasters contended that this would siphon off advertising revenues,<sup>14</sup> while others argued that TIS operations would cause impermissible interference with their operations.<sup>15</sup>

7. To address these concerns, the Commission prohibited TIS operators from transmitting commercial messages and emphasized that strict limits would be placed on other operational aspects of

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<sup>8</sup> See 47 C.F.R. § 90.242(b)(8).

<sup>9</sup> See *NPRM*, *supra*.

<sup>10</sup> See *TIS Report and Order*, 67 F.C.C. 2d at 917 ¶ 1. As we explain in more detail in paragraph 30 below, when the Commission consolidated a number of existing services (including the service under which the Travelers Information Stations – TIS – operated) within the Public Safety Pool in 1997, it extended eligibility for each of those services to any entity that had been eligible for any one of those services. Accordingly, TIS licenses could be held by any entity eligible for a license within the Public Safety Pool, not just the Local Government entities referenced by the Commission in the 1977 *TIS Report and Order*. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, PR Docket No. 92-235, [Second Report and Order](#), 12 FCC Rcd 14307, 14323 ¶ 29 (1997) (*Refarming Second Report and Order*).

<sup>11</sup> See *TIS Report and Order*, 67 F.C.C. 2d at 921 ¶ 15.

<sup>12</sup> *Id.* at 922 ¶ 16.

<sup>13</sup> *Id.* at 918 ¶ 5.

<sup>14</sup> *Id.* at 919 ¶ 9.

<sup>15</sup> *Id.* at 924 ¶ 24.

TIS licenses, including limits on authorized power levels.<sup>16</sup> The Commission also adopted power and transmitter location limitations to ensure that TIS operations typically would be confined to the immediate vicinity of specified, travel-related areas.<sup>17</sup> The Commission imposed the transmitter location restriction with the objective of limiting service to “the traveler in the immediate vicinity of the station.”<sup>18</sup> Although the Commission did not preclude TIS operations from using multiple transmitters, the Commission did not allow multiple TIS transmitters to operate as a network, but instead required each TIS site to provide specifically targeted information restricted to the immediate vicinity of the area served by that site.<sup>19</sup>

8. The Commission authorizes TIS stations on a primary basis on 530 kHz and on a secondary basis in the 535-1705 kHz band, all of which can be received on a conventional AM radio.<sup>20</sup> TIS stations operate at low power: maximum output power is 50 watts with a cable antenna and 10 watts with a traditional radiating antenna.<sup>21</sup> TIS stations may only transmit “noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest.”<sup>22</sup> Finally, the rule restricts TIS transmitting sites to “the immediate vicinity of ... [a]ir, train, and bus transportation terminals, public parks and historical sites, bridges, tunnels, and any intersection of a Federal Interstate Highway with any other Interstate, Federal, State, or local highway.”<sup>23</sup>

9. The Commission has not undertaken a major amendment of the TIS rules since their inception in 1977. However, in an effort to address apparent operational limitations imposed by the current TIS rules, a few TIS operators have acted on their own accord to expand the scope of TIS content and operations. This has resulted in at least one Commission enforcement action.<sup>24</sup> Other TIS operators and their sponsors have sought to expand the scope of TIS operations through rule waiver requests.<sup>25</sup>

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<sup>16</sup> *Id.* at 917 ¶ 1.

<sup>17</sup> See 47 C.F.R. § 90.242(a)(5). See also 47 C.F.R. § 90.242(b)(4) (limiting output power and the field strength of the emission on the operating frequency).

<sup>18</sup> *TIS Report and Order*, 67 F.C.C. 2d at 923 ¶ 23.

<sup>19</sup> *Id.* at 923 ¶ 20. See also *id.* at 923-24 ¶ 23 (“[I]n instituting this rule we are specifically precluding an applicant from setting up a ‘network,’ or ‘ribbon’ of transmitting stations along a highway for the purpose of continuously attracting a motorist with what could be superfluous information.”).

<sup>20</sup> 47 C.F.R. § 90.242(a)(3).

<sup>21</sup> 47 C.F.R. § 90.242(b)(3)(ii); 47 C.F.R. § 90.242(b)(4)(iii).

<sup>22</sup> 47 C.F.R. § 90.242(a)(7).

<sup>23</sup> 47 C.F.R. § 90.242(a)(5).

<sup>24</sup> See, e.g., City of Santa Monica Licensee of Radio Station WQGR42, File No. EB-07-LA-216, *Notice of Violation* (Jul. 12, 2007) (*Santa Monica Violation Notice*) (retransmission of NOAA weather broadcasts).

<sup>25</sup> See, e.g., Howard County, Maryland, File No. 0003163756, *Order*, 24 FCC Rcd 1566 (PSHSB PD 2009) (granting waiver to add two sites with expanded coverage contours) (*Howard County Order*); Letter, Dana Shaffer, Chief, Policy Division, to Thomas Hall, Engineering Manager, Highway Information Systems, 22 FCC Rcd 12816 (PSHSB PD 2007) (denying waiver to Edgecombe County Emergency Management, North Carolina to increase authorized power); County of Arlington, Virginia, File Nos. 0002108062, 0002822293, *Order*, 22 FCC Rcd 4192 (PSHSB PD 2007) (*Arlington County 2007 Order*) (granting waiver to communicate over expanded area during emergencies); California Department of Transportation Request for Waiver of Section 90.242(a)(7) of the Commission’s Rules, *Order*, 22 FCC Rcd 1824 (PSHSB PD 2007) (denying waiver to use TIS to broadcast energy conservation information); County of Arlington, Virginia, File No. 0002108062, *Order*, 20 FCC Rcd 14785 (WTB (continued....))

10. On July 16, 2008, HIS filed a petition for rulemaking (HIS Petition) to amend the TIS rules. The HIS Petition requested that the Commission: (1) re-title TIS as the “Local Government Radio Service;”<sup>26</sup> (2) expand the permissible use rule in Section 90.242(a)(7) to “provide that stations in the local government radio service may be used to broadcast information of a non-commercial nature as determined by the government entity licensed to operate the station and other government entities with which the licensee cooperates;”<sup>27</sup> and (3) “eliminate the limitation on the sites for local government radio stations that confines such stations to areas near roads, highways and public transportation terminals.”<sup>28</sup>

11. On September 9, 2008, AAIRO filed a petition for declaratory ruling (AAIRO Petition). The AAIRO Petition asked for (1) a “[r]uling that any message concerning the safety of life or protection of property that may affect any traveler or any individual in transit or soon to be in transit, may be transmitted on Travelers’ Information Stations, at the sole discretion of officials authorized to operate such stations;” and (2) “a clear directive that such messages, by definition, are expressly included in the permissible content categories defined by 47 C.F.R. Sec. 90.242(a)(7).”<sup>29</sup> In its petition, AAIRO stated that such a declaration would allow the broadcast of a wide range of information over TIS, including National Oceanic and Atmospheric Administration (NOAA) Weather Radio retransmissions, AMBER Alerts,<sup>30</sup> alternate phone numbers when local 911 systems fail, terror threat alert levels,<sup>31</sup> public health warnings “and all manner of civil defense announcements.”<sup>32</sup> AAIRO, however, did not seek any expansion of TIS operational limitations currently imposed by the Commission’s rules.

12. On March 16, 2009, AASHTO filed a petition for rulemaking seeking revision of the TIS rules to permit the transmission of AMBER Alerts and information regarding the availability of 511 traffic and transportation information services.<sup>33</sup>

13. On February 13, 2009, the Public Safety and Homeland Security Bureau (Bureau) released a public notice seeking comment on the HIS and AAIRO Petitions, and received 61 comments.<sup>34</sup>

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PSCID 2005) (denying waiver to increase authorized power); Los Angeles World Airports, File No. 0001187565, *Order*, 19 FCC Rcd 4117 (WTB PSCID 2004) (granting waiver to increase authorized power).

<sup>26</sup> HIS Petition at 9.

<sup>27</sup> *Id.* at 10.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 1.

<sup>30</sup> The AMBER Alert™ Program is a voluntary partnership between law-enforcement agencies, broadcasters, transportation agencies, and the wireless industry, to activate an urgent bulletin in the most serious child-abduction cases. See U.S. Department of Justice, Office of Justice Programs, “Amber Alert,” available at <http://www.amberalert.gov/>.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 4.

<sup>33</sup> “511” is a nationwide telephone number for traveler information. See U.S. Department of Transportation, Federal Highway Administration, “America’s Traveler Information Telephone Number - What Is It?” available at <http://www.fhwa.dot.gov/trafficinfo/511what.htm>.

<sup>34</sup> Public Safety and Homeland Security Bureau Seeks Comment on the Petition for Rulemaking of Highway Information Systems, Inc. to Revise and Update the Traveler’s Information Station Rules and on the Petition of the American Association of Information Radio Operators for Ruling on Travelers’ Information Station Rules, RM-11514, PS Docket No. 09-19, *Public Notice*, 24 FCC Rcd 1562 (PSHSB PD 2009).

On April 23, 2009, the Bureau released a public notice seeking comment on the AASHTO Petition, and received 11 comments.<sup>35</sup>

14. On December 30, 2010, the Commission released its *Notice of Proposed Rulemaking* in this proceeding consolidating the substantive and operational issues raised in the three petitions and related records.<sup>36</sup> The *NPRM* received ten comments and 28 reply comments (five late-filed).<sup>37</sup> On December 18, 2012 and December 28, 2012, AAIRO made supplemental *ex parte* filings, which included further correspondence in support of its petition from public safety entities and others.<sup>38</sup>

### III. REPORT AND ORDER

15. We now consider the record in this proceeding with respect to two major categories: (1) what constitutes permissible information that may be transmitted over TIS stations, and (2) what geographic and operational limitations apply to TIS.

#### A. Permissible TIS Content

16. *NPRM*. The *NPRM* sought comment on a variety of issues related to expansion of permissible TIS content. It asked whether the Commission should expand the scope of the TIS rules to allow a broader array of government information and alerts; whether the Commission should identify specific services, such as AMBER Alerts and NOAA weather broadcasts, as permissible under the TIS services rules; what limits, if any, the Commission should place on information allowed to be transmitted over TIS; and whether expansion of the TIS rules as proposed by HIS, AAIRO, and AASHTO would have any adverse effect on commercial broadcasting.<sup>39</sup> The *NPRM* also sought specific comment on whether continuing to require a traveler-related nexus served the public interest; and if the travel-related nexus were retained, the extent, if any, to which the type of information broadcast over the TIS service might be broadened without “diluting” the value of the service to travelers.<sup>40</sup> The *NPRM* also sought comment on AASHTO’s position and the distinction it made between the rebroadcast over TIS of routine versus non-routine NOAA weather reports.<sup>41</sup> Finally, the *NPRM* sought comment on whether the name of the service should be changed.<sup>42</sup>

17. As a threshold matter, we note that the current TIS rules already permit transmission of much of the information cited by AAIRO and other commenters. Section 90.242 expressly allows TIS transmission of, *inter alia*, “noncommercial voice information pertaining to traffic and road conditions,

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<sup>35</sup> Public Safety and Homeland Security Bureau Seeks Comment on the Petition for Rulemaking of the American Association of State Highway and Transportation Officials, RM-11531, *Public Notice*, 24 FCC Rcd 4870 (PSHSB PD 2009).

<sup>36</sup> *See NPRM*. There was also an attached Order which dismissed AAIRO’s petition for ruling as administratively inappropriate. However, the *NPRM* incorporated AAIRO’s substantive arguments.

<sup>37</sup> *See* Appendix A for a list of commenters.

<sup>38</sup> *See* Ex Parte Filing of Correspondence Pursuant to Section 1.1206 of the Rules (filed Dec. 18, 2012)(AAIRO Dec. 18 Ex Parte); Supplemental Ex Parte Filing of Correspondence Pursuant to Section 1.1206 of the Rules (filed Dec. 28, 2012) (AAIRO Dec. 28 Ex Parte).

<sup>39</sup> *NPRM*, 25 FCC Rcd at 18122-23 ¶¶ 15, 16.

<sup>40</sup> *Id.* at 18126-27 ¶ 27.

<sup>41</sup> *Id.* at 18124 ¶ 19.

<sup>42</sup> *Id.* at 18125 ¶ 23.

traffic hazards and travel advisories, directions [and] rest stops.”<sup>43</sup> Thus, under this provision of the rule, TIS operators may transmit weather alerts regarding difficult or hazardous conditions (whether or not “tone alerted”), as well as information regarding motor vehicle crashes, emergency points of assembly, road closures and construction, parking, current driving travel times, air flight status, truck weigh stations, driver rest areas, locations of truck services, and road closures.<sup>44</sup>

18. *511 Service.* The *NPRM* sought comment on AASHTO’s request to allow TIS stations to provide information about the availability of 511 service.<sup>45</sup> All commenters support this request,<sup>46</sup> although San Francisco opposes as duplicative allowing TIS stations to repeat the same information that is available on 511.<sup>47</sup> AAIRO, however, advises that “TIS and 5-1-1 systems can co-exist and complement each other.”<sup>48</sup> We agree with AAIRO and therefore clarify that information on the availability of 511 service is already allowed under our TIS rules, because such information directly relates to the provision of travel-related information.

19. *Non-Commercial Content.* In its petition, HIS asked the Commission to revise the TIS rules to allow the broadcast of any non-commercial content.<sup>49</sup> Although this proposal garnered some support in the initial comment cycle related to the HIS Petition, most *NPRM* commenters oppose the proposal, reasoning that allowing TIS to broadcast any type of non-commercial content would dilute the public safety value of the TIS service.<sup>50</sup> APCO retains a “neutral” position, but remains concerned about dilution of “the emergency purposes of TIS and [the possibility to] potentially confuse travelers accustomed to finding time-sensitive safety and traffic information on TIS.”<sup>51</sup> We agree with the majority of commenters who believe that TIS should retain its historical focus on serving the needs of the traveling public. The record indicates that such a dedicated service continues to serve the public interest in that it contributes both to public safety and convenience.<sup>52</sup> Accordingly we decline to implement this change to the TIS content rules.

<sup>43</sup> See 47 C.F.R. § 90.242(a)(7).

<sup>44</sup> See AAIRO Comments at 13; AAIRO Dec. 28 Ex Parte at 2.

<sup>45</sup> *NPRM*, 25 FCC Rcd at 18129 ¶ 36.

<sup>46</sup> See Alaska Comments at 1; AAIRO Comments at 5, 22; AASHTO Comments at 6; Gropper Comments at 7; SHA Comments at 12; NAB Comments at 3, 4, 9; NPR Comments at 4; San Francisco Comments at 2; George Reply Comments at 1. “511” is a nationwide telephone number for traveler information. See U.S. Department of Transportation, Federal Highway Administration, “America’s Traveler Information Telephone Number - What Is It?” available at <http://www.fhwa.dot.gov/trafficinfo/511what.htm>.

<sup>47</sup> San Francisco Comments at 2.

<sup>48</sup> AAIRO Reply Comments at 8. See also Gropper Comments at 13 (TIS and 511 systems are not in competition).

<sup>49</sup> *HIS Petition* at 10.

<sup>50</sup> See SHA Comments at 6; NAB Comments at 6, 9; NPR Comments at 2; George Reply Comments at 1; NAB Reply Comments at 2.

<sup>51</sup> APCO Reply Comments at 2.

<sup>52</sup> See, e.g. AAIRO Comments at 6 (“TIS service [is] irreplaceable by other media ... TIS can provide full descriptions and elaborations to the driver which can be ‘heads-up’ and ‘hands-free’ while he or she is listening”); AASHTO Comments at 8 (“the traveling public has ... a need for non-routine information that may uniquely affect them as they travel through an area.”); NAB Reply Comments at 2 (“TIS operations [have a] unique value ... as a source for emergency and other travel-related information.”); Cook Comments (“I have found these stations to be quite useful when traveling”); Bartlett Comments (“When traffic is backed up for what appears to be miles ahead, I (continued....)”).

20. *Non-Travel Related Emergency and Imminent Threat Information.* In the *NPRM*, the Commission sought comment on whether TIS stations should be allowed to transmit emergency information and information related to imminent threats to safety and property, even if such information is not directly travel-related.<sup>53</sup> Most commenters support allowing TIS to transmit emergency and imminent threat information, *e.g.*, AMBER and Silver Alerts.<sup>54</sup> Several commenters note that TIS serves as a platform of last resort with regard to the broadcast of emergency information. For example, during Hurricane Sandy, the town of North Plainfield, New Jersey's TIS transmitter made it possible for the town to provide updates of local emergency information both at the height of the storm and throughout the power outage that followed.<sup>55</sup> However, AASHTO contends that transmission of such information by TIS stations is already permitted under rules that allow all Part 90 licensees, including TIS operators, to transmit emergency information.<sup>56</sup>

21. We agree with AASHTO that TIS broadcasting of emergency information and information related to imminent threats to safety and property, whether travel-related or not, is already allowed under our Part 90 rules. Section 90.405(a)(1) allows all Part 90 licensees, which includes TIS licensees, to transmit "any communications related directly to the imminent safety-of-life or property."<sup>57</sup> For example, this allows use of TIS for AMBER and Silver Alerts, as well as transmission of information about other imminent threats. Similarly, Section 90.407 allows Part 90 licensees to transmit emergency communications "during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster."<sup>58</sup> In an emergency context, this clearly could include transmission by TIS stations of information regarding evacuation routes and the location of shelters, health care, and other emergency facilities. To further clarify that TIS transmitters may be used to transmit non-travel related emergency information in accordance with those rules, we add the following sentence at the end of Section 90.242(a)(7): "Travelers Information Stations may also transmit information in accordance with the provisions of §§ 90.405(a)(1) and 90.407."

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want to be able to tune in to the designated radio station to know 1) what, 2) why, 3) how long the anticipated wait, and 4) alternate travel routes."; AAIRO Dec. 28 Ex Parte, Lyndhurst Letter at 2 ("The TIS station is essential to our community and emergency operations procedures."), Burlington Letter ("TIS stations can fill a need that commercial broadcasters can only perform on a much broader, generalized scale.").

<sup>53</sup> See *NPRM*, 25 FCC Rcd at 18122-23 ¶ 15.

<sup>54</sup> Modeled after the Amber Alert, the Silver Alert is an emergency system in which law enforcement can broadcast regional or statewide alerts for missing seniors and/or other adults with Alzheimer's or other cognitive disorders. See "National Silver Alert Program," available at <http://nationalsilveralert.org/silveralert.htm>. AASHTO, however, opposes inclusion of Silver Alerts as permissible content, arguing that they lack "a firm set of standards regarding the message content and the authority to issue the alert." AASHTO Ex Parte at 1.

<sup>55</sup> See, "Radio Comes to the Rescue in North Plainfield," *New Jersey Municipalities* (February 2013), at 30-31. See, also, *e.g.*, Gropper Comments at 10 (TIS connected to commercial grade NWR provided warning to university campus about tornado); Reynolds Reply Comments at 1 (following city-wide flood, only TIS worked initially). See, also AAIRO Dec. 18 Ex Parte, Manasquan Letter, Monmouth Beach Letter, North Plainfield Letter (radio station continued to operate after Hurricane Sandy); AAIRO Dec. 28 Ex Parte, Lyndhurst Letter at 2 (post Hurricane Sandy information initially only available to public on AM radio); Reynolds Letter (TIS station only tool available to provide information to residents during flood).

<sup>56</sup> AASHTO Comments at 5 (footnotes omitted).

<sup>57</sup> 47 C.F.R. § 90.405(a)(1).

<sup>58</sup> 47 C.F.R. § 90.407.



22. *Non-Emergency Non-Travel-Related Public Health and Safety Information.* A number of commenters propose allowing TIS operators to transmit “public health” and/or “public safety” messages even if they do not have a travel-related nexus, are not emergency-related, or do not relate directly to an imminent threat.<sup>59</sup> NAB, on the other hand, opposes TIS broadcast of “routine, non-emergency information”<sup>60</sup> and argues that TIS operators should be limited to providing information that will promote “situational awareness.”<sup>61</sup> NPR endorses the broadcast of “highly localized travel- and public safety-related information that is largely unavailable elsewhere” but supports “maintaining the existing travel and public safety nexus.”<sup>62</sup> AASHTO similarly states there is no need for TIS to transmit any non-commercial information beyond “non-routine information that may uniquely affect [travelers] as they travel through an area.”<sup>63</sup> SHA agrees that any expansion should be “limited to travel-related messages.”<sup>64</sup> San Francisco takes the most restrictive view, stating that “TIS should be confined to emergency alerts only, especially in areas without cellular coverage.”<sup>65</sup>

23. Commenters differ on whether TIS stations should be allowed to broadcast weather information originated by NOAA. While no commenter disputes that TIS may broadcast emergency NOAA weather announcements, AAIRO contends that TIS rules should also allow broadcast of “routine, detailed weather announcements.”<sup>66</sup> AAIRO reasons that “only a fraction of the population” has NOAA weather receivers, that routine NOAA weather broadcasts give information about road surface conditions, and that extended forecasts help travelers to plan their routes.<sup>67</sup> AAIRO also states that “NOAA Radio ‘All-Hazard’ information ... provide[s] pertinent lifesaving information to travelers.”<sup>68</sup> AAIRO contends that broadcast of routine NOAA weather information would not “dilute TIS content or prove superfluous to its mission.” AAIRO considers it “likely that NOAA broadcasts will be excerpted by TIS, not run in their entirety, thus not replicating all NOAA content or duplicating broadcast news reports.”<sup>69</sup> Many other commenters support this proposal.<sup>70</sup>

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<sup>59</sup> See, e.g., SHA Comments at 12 (“inclusion of [DHS] and public safety messages.”); Alaska Comments at 1 (“TIS should be limited to information related to travel advisories, public health and/or safety, and emergencies.”); Huizenga Letter at 1 (urging expansion of current TIS content beyond that “which pertains to traffic and travel-related activities” in order “to better adapt to the overall safety needs of our citizens.”); APCO Reply Comments at 1 (supporting broadcasting of “public health messages, homeland security alerts, and civil defense notices.”); George Reply Comments at 1 (suggesting allowance of “public health alerts, civil defense alerts, and terror alerts.”); Fort Hood Reply Comments at 16 (allow broadcast of information on “power outages, pandemics”); AAIRO Dec. 28 Ex Parte at 2 (procedures a motorist should follow should a school shooting incident occur, how to report suspicious activity of campus).

<sup>60</sup> NAB Comments at 6.

<sup>61</sup> *Id.* at 8.

<sup>62</sup> *Id.* at 2-3.

<sup>63</sup> AASHTO Comments at 8.

<sup>64</sup> SHA Comments at 2.

<sup>65</sup> San Francisco Comments at 1.

<sup>66</sup> AAIRO Comments at 5-6.

<sup>67</sup> *Id.* at 5-6.

<sup>68</sup> *Id.* at 8. NOAA Weather Radio All-Hazards broadcasts National Weather Service warnings, watches, forecasts and other non-weather related hazard information 24 hours a day. See NOAA Weather Radio All-Hazards, available at <http://www.nws.noaa.gov/nwr/allhazard.htm>.

<sup>69</sup> *Id.* at 10.

24. AASHTO, on the other hand, argues that other options exist for accessing routine NOAA weather information and that “TIS transmissions should continue to be reserved for location and time-limited weather related and other emergency information.” AASHTO suggests that “expansion of information beyond this basic core will dilute the value of TIS transmissions and travelers will be dissuaded from tuning to TIS transmissions unless they know that important emergency information is being transmitted.”<sup>71</sup> Several other commenters agree.<sup>72</sup> Gropper notes that “[t]ravelers now have many sources of up to the minute weather and traffic information beyond traditional AM and FM broadcast sources, including cell phone, mobile internet, automobile based information systems, and satellite radio. Therefore, due to technological advances, TIS is no longer the primary alternative to AM/FM broadcasts for this information.”<sup>73</sup> Nevertheless, Gropper supports integrating NOAA Weather Radio into TIS, short of continuous rebroadcast, arguing that this will allow for full automation of such broadcasts during an emergency and that not all information regarding dangerous weather conditions is “tone alerted” (*e.g.* severe weather statements, dense fog and snow advisories).<sup>74</sup>

25. We find that expanding the TIS rules to allow the transmission of non-emergency, non-travel-related information would dilute the effectiveness of TIS in assisting travelers and providing geographically focused emergency information. Routine weather information is widely available on commercial radio stations and increasingly available over cell phone, mobile internet, automobile based information systems, and satellite radio. While motorists should not access weather information from cell phones and the mobile internet while driving, they may safely do so through the other foregoing means. By limiting TIS weather information to potentially hazardous conditions, drivers and other travelers will know immediately that they are receiving non-routine weather information that could negatively impact driving conditions. Moreover, prohibiting the routine retransmission of NOAA weather radio broadcasts does not thereby prohibit the “integration” of NOAA weather radio or NOAA radio all-hazards information into TIS during times of hazardous or potentially hazardous conditions. TIS stations may transmit NOAA broadcasts, whether “tone alerted” or not, so long as they relate to an existing or potential hazard. Similarly, we find that allowing routine TIS broadcast during non-emergency periods of terrorist threat levels, public health alerts, emergency preparedness messages, conservation messages, and the like, is not in the public interest, as such routine broadcasts also would dilute situational awareness pertinent to the traveling motorist. The primary purpose of the TIS is to assist motorists in the process of traveling and to provide emergency and imminent threat information in covered areas. Therefore, we will continue to disallow messages that do not have a travel nexus, are not emergency-related, or do not relate directly to an imminent threat because such messages would dilute the convenience and efficacy of TIS.

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<sup>70</sup> Auburn Reply Comments at 2; Avalon Reply Comments at 1; Fort Bend Reply Comments at 1; George Reply Comments at 1, Fairfield Reply Comments at 1; Aurora Reply Comments at 1; Flaherty Reply Comments at 1; Hennes Reply Comments at 1; Los Alamos Reply Comments at 1; Manville Reply Comments at 1; Mentor Reply Comments at 1; North Wildwood Reply Comments at 1; Peabody Reply Comments at 1; Wildland Reply Comments at 1; Pavlica Reply Comments at 1. Other Commenters simply support the AAIRO petition generically. *See* Effingham County Reply Comments at 1; Montecito Reply Comments at 1; Ocean City Reply Comments at 1; Lexington-Fayette Reply Comments at 2; Dickey County Reply Comments at 1.

<sup>71</sup> AASHTO Comments at 4-5.

<sup>72</sup> *See* SHA Comments at 2 (allow non-routine weather reports); NAB Comments at 7 (allow “NOAA weather warnings during certain emergency conditions.”); APCO Reply Comments at 1 (use TIS for “severe weather alerts”).

<sup>73</sup> Gropper Comments at 2.

<sup>74</sup> *Id.* at 2, 3, 10, 12, 17. Gropper also suggests interfacing TIS with EAS. *Id.* at 3.

26. *Determination of what constitutes allowable information.* Beyond the issue of defining the allowable scope of TIS content, commenters also express divergent views on who should determine whether any particular content complies with the applicable definition. Some commenters argue for detailed rule-based definitions of what is permissible. AASHTO argues that “TIS licensees would be better served with rule-based criteria that specify the information that may be transmitted over TIS facilities and the mechanism by which a TIS operator may determine when the transmission of emergency information should begin and end.”<sup>75</sup> AASHTO suggests allowable emergency information is that which is “officially recognized by the Federal government.”<sup>76</sup> SHA agrees that there should be “nationwide consistency” in messaging in order to meet “the expectations of the traveling public.”<sup>77</sup> However, SHA suggests that 47 C.F.R. §§ 90.405(a)(1) and 90.407 “provide sufficient guidance related to the broadcast of routine and non-routine information during emergency situations.”<sup>78</sup>

27. Other commenters argue for giving discretion to TIS licensees to determine what is and is not permissible under the applicable rules. AAIRO suggests that the Commission “defer to TIS operators on a general basis” on which content to air.<sup>79</sup> Similarly, Gropper advises the Commission to “NOT choose the permitted content on TIS, but instead ... set broad areas of permitted activities and leave it to the licensees to implement the FCC’s policy.”<sup>80</sup> George states that local governments are best “qualified to make the decision on what information should be distributed.”<sup>81</sup> Auburn similarly states that TIS operators should be allowed to use TIS “regardless of the exact nature of the life safety message that we choose to broadcast.”<sup>82</sup> AAIRO states that the Commission must achieve a balance between “too strict definitional criteria [which] would be impractical,” and sufficient clarity “to avoid the chilling effect of uncertainty in the current rule.”<sup>83</sup>

28. We are persuaded by those commenters that argue that the Part 90 rules should allow for discretion on the part of TIS licensees regarding use of the TIS service. Given their intimate knowledge of local conditions and considering the limited area of operation of TIS base stations, TIS licensees are in the best position to determine what constitutes an “imminent [threat to] safety-of-life or property,” as well as when emergency conditions reach the level of a “hurricane, flood, earthquake or similar disaster.” Again, permissible use of the TIS in such conditions could include the transmission of evacuation routes and the location of shelters, health care and other emergency facilities, as well as weather or other conditions that may negatively impact driving conditions. These clarifications are consistent with the Commission’s longstanding recognition of the public interest in ensuring that TIS stations timely inform traveling motorists about emergency events and situations that may have a bearing on the immediate

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<sup>75</sup> AASHTO Comments at 5.

<sup>76</sup> *Id.* at 6 (footnote omitted).

<sup>77</sup> SHA Comments at 3, 4.

<sup>78</sup> *Id.* at 3.

<sup>79</sup> AAIRO Reply Comments at 12.

<sup>80</sup> Gropper Comments at 3 (emphasis in original).

<sup>81</sup> George Comments at 2. *See also* Fairfield Reply Comments at 1 (local operators should have discretion.”); Hennes Reply Comments at 1 (announce TIS operators have discretion to broadcast “public safety information for the protection of life and property”); Vashon Reply Comments at 1 (local officials must be able to use when they deem necessary).

<sup>82</sup> Auburn Reply Comments at 1.

<sup>83</sup> AAIRO Reply Comments at 7.

welfare and safety of the public. Nevertheless, we also emphasize that local authorities only have discretion within the scope of the Part 90 rules, and that with that discretion comes responsibility for compliance. The discretion afforded to local authorities therefore does not in any way limit our authority to take enforcement action to the extent a TIS station operates in violation of this *Report and Order* or the Part 90 rules.

29. *Service Name Change.* Commenters are divided on whether to adopt a new name for TIS. AASHTO suggests changing the name to “Highway Advisory Service.”<sup>84</sup> Gropper suggests “Transportation and Government Information AM Radio Service,” which he contends would “reflect the new potential scope of the service.”<sup>85</sup> Snyder supports a name change along with the lifting of restrictions to use by government agencies only.<sup>86</sup> SHA opposes the name “Local Government Radio Service,” proposed in the HIS Petition, on the grounds that many TIS operators are not local government organizations and that such a name change could promote broadcasting of information “already covered by commercial radio stations.”<sup>87</sup> AAIRO opposes a name change as it does not favor changing the fundamental nature of the service.<sup>88</sup>

30. We will retain the present name of the service. Given our determination above that the primary purpose of TIS is to assist motorists in the process of traveling and to provide emergency and imminent threat information in covered areas,<sup>89</sup> we see no reason to adopt a new service name.

31. We also take this opportunity to update the definition of TIS in Section 90.7<sup>90</sup> by replacing the reference to the former Local Government Radio Service with a reference to the Public Safety Pool. This change recognizes that the Local Governmental Radio Service is an anachronism (since that Service was folded into the Public Safety Pool) and conforms the definition of TIS to the relevant substantive authorizing rules, which assign to the Public Safety Pool the operation of TIS.<sup>91</sup> While we did not specifically request comment on updating the definition of TIS, under Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), notice and comment procedures do not apply “when the agency for good cause finds (and incorporates the finding and a brief statement for reasons therefore in the rules issued) that notice and public procedures thereon are . . . unnecessary.” The “unnecessary” exception to the notice requirement is “confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.”<sup>92</sup> “‘Unnecessary’ refers to the issuance of a minor rule or amendment in which the public is not particularly interested.”<sup>93</sup> We find that updating the definition of “Travelers’

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<sup>84</sup> AASHTO Comments at ii.

<sup>85</sup> Gropper Comments at 3, 25.

<sup>86</sup> Snyder Comments at 1.

<sup>87</sup> SHA Comments at 6.

<sup>88</sup> AAIRO Comments at 17; AAIRO Reply Comments at 8.

<sup>89</sup> See para. 25, *supra*.

<sup>90</sup> 47 C.F.R. § 90.7.

<sup>91</sup> See, e.g., 47 C.F.R. § 90.242(a).

<sup>92</sup> *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir., 2001), citing *Texaco v. FPC*, 412 F.2d 740, 743 (3d Cir., 1969); *Sections 2.925 and 2.926 of the Rules Regarding Grantee Codes for Certified Radiofrequency Equipment, Order*, 27 FCC Rcd 6565, 6567 ¶ 8 (2012) (*Grantee Code Order*).

<sup>93</sup> *Texaco*, 412 F.2d at 743 n.3; *Grantee Code Order*, 27 FCC Rcd at 6567 n.11.

information station” in Section 90.7 meets the requirements for the good cause exception because notice and comment are “unnecessary” in these respects; the amendment of the rule defining TIS constitutes an editorial change that simply reflects Commission action taken in 1997.<sup>94</sup> In that action, the Commission eliminated the Local Governmental Radio Service as a stand-alone service by folding it into the broader Public Safety Pool, and extended eligibility for each of the Pool’s component services to any entity that had been eligible for any one of those services.<sup>95</sup> Accordingly, since 1997, TIS licenses could be held by any entity eligible for a license within the Public Safety Pool, not just entities that had been eligible for the superseded Local Governmental Radio Service referenced by the definition of TIS in Section 90.7.

## B. Geographic and Operational Limitations

32. *NPRM.* With regard to TIS operational limitations, the *NPRM* asked a series of technical questions: whether the Section 90.242 interference protection standards adequately protect AM stations; whether the Commission should adopt specific second and third-adjacent channel protection standards to ensure lack of interference to AM stations; to what extent TIS broadcast locations could be expanded without resulting in harmful interference to other licensees; to what extent those changes would be of any practical usefulness given the limitations on power output presently established in the TIS rules; whether those power output limitations would also need to be relaxed in order to provide local governments with any benefits; if power output limitations were relaxed, what rule changes would be necessary to ensure that AM stations are adequately protected; and whether there any other technical rules that would need to be changed.<sup>96</sup>

33. In general, AAIRO argues that no revision to the technical or siting provisions of the rules is necessary aside from lifting the filtering restriction in Section 90.242(b)(8) (discussed in the Further Notice of Proposed Rulemaking below).<sup>97</sup> HIS proposed elimination of all TIS site transmitter locations, but its successor entity, Vaisala, merely states that it supports “more operational flexibility” without requesting specific changes.<sup>98</sup> AASHTO calls for adjustment of “power levels and other technical criteria to improve the service while ensuring that TIS facilities will not cause harmful interference to AM broadcast stations.”<sup>99</sup> Several comments were directed to particular technical issues.

34. *Field Strength.* Section 90.242(b)(4)(iv) of the Commission’s rules specifies that the field strength of TIS stations may “not exceed 2 mV/m when measured with a standard strength meter at a distance of 1.50 km (0.93 miles) from the transmitting antenna system.”<sup>100</sup> The *NPRM* asked whether the existing TIS field strength limit was necessary to protect AM broadcast stations and other TIS stations from interference when other technical limitations exist in the rules; whether the field strength limit was only needed because of the present requirement to provide specific information to the “immediate vicinity” of areas listed in Section 90.242(a)(5); whether this limit would be unnecessary if TIS stations were to be permitted to provide more general information that is applicable to broader areas; what, if the Commission allows TIS stations to serve broader areas, the new field strength limit should be, if any; whether a relaxed field strength limit frustrates the purpose of the Commission’s spacing

<sup>94</sup> *Refarming Second Report and Order*, 12 FCC Rcd at 14309 ¶ 3.

<sup>95</sup> *Id.* at 14323 ¶ 29.

<sup>96</sup> *NPRM*, 25 FCC Rcd at 18127 ¶ 29.

<sup>97</sup> AAIRO Comments at 20-21.

<sup>98</sup> Vaisala Comments at 3. HIS requested elimination of all TIS transmitter site limitations. *See* ¶ 10, *supra*.

<sup>99</sup> AASHTO Comments at ii.

<sup>100</sup> 47 C.F.R. § 90.242(b)(4)(iv).

requirements between co-channel TIS stations as set forth in Section 90.242(b)(5) of the Commission's rules; and whether additional technical or operational changes would be necessary if the field strength limits were amended.<sup>101</sup>

35. There was limited comment on these issues. SHA opposes increasing the maximum field strength of TIS, arguing that if it is increased, "risks of interference will be present and the FCC will then have to adopt specific second and third level channel protection standards" necessitating "a research project to determine the effects on AM stations, under a variety of scenarios (power output, spacing, field strength, etc.)" prior to any rule change.<sup>102</sup> We find that the record provides no substantial support for changing the field strength limit. We encourage licensees to continue to work together to resolve interference issues that occur under our existing technical rules. We also note that the Commission may modify a TIS authorization if a legally-operating TIS station causes interference.<sup>103</sup>

36. *Site Location Restrictions.* Our rules restrict TIS transmitting sites to "the immediate vicinity of ... [a]ir, train, and bus transportation terminals, public parks and historical sites, bridges, tunnels, and any intersection of a Federal Interstate Highway with any other Interstate, Federal, State, or local highway."<sup>104</sup> The *NPRM* sought comment on HIS's request that we remove these siting restrictions.<sup>105</sup> Gropper supports "[r]elaxed siting of AM transmitters ... to provide for maximum utilization of the TIS system."<sup>106</sup> AASHTO, however, suggests only minimal expansion of location requirements, if any, and a reevaluation of appropriate power levels and other technical criteria for TIS stations due to the long passage of time since the regulations were promulgated.<sup>107</sup> Both AAIRO and SHA oppose eliminating site restrictions due to interference concerns.<sup>108</sup> NAB adds that eliminating such restrictions "would delink TIS operations from its intended purpose."<sup>109</sup>

37. We believe the record provides insufficient support for any modification of present TIS site restrictions since it does not establish whether elimination or even expansion of these restrictions would lead to harmful interference with non-TIS stations. Accordingly, we find that retaining these restrictions is in the public interest, and thus we leave them in place as well.

38. *Other Rule Changes to Protect Other AM Stations.* Pavlica states that in order to protect other AM stations from interference at night, TIS transmitters must "be prepared to change [their] frequency +/- 30 KHz in the event of night time skywave interference reported by the public."<sup>110</sup> While we appreciate this concern, we encourage licensees to continue to work together to resolve interference issues that occur under our existing technical rules. We note that the Commission may modify a TIS authorization if a legally-operating TIS station causes interference. The Commission will also take

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<sup>101</sup> *NPRM* at 18128-29 ¶ 33.

<sup>102</sup> SHA Comments at 10-11.

<sup>103</sup> See 47 C.F.R. § 90.242(a)(4).

<sup>104</sup> 47 C.F.R. § 90.242(a)(5).

<sup>105</sup> *NPRM*, 25 FCC Rcd at 18127 ¶ 29.

<sup>106</sup> Gropper Comments at 3.

<sup>107</sup> AASHTO Comments at 8-9.

<sup>108</sup> AAIRO Comments at 21; SHA Comments at 9.

<sup>109</sup> NAB Comments at 8.

<sup>110</sup> Pavlica Reply Comments at 3.

enforcement action, as appropriate, where there are violations of the Commission's rules. Accordingly, we do not believe the record indicates the need for further action on our part on this issue at present.

39. *Ribbon Systems.* The 1997 *TIS Report and Order* prohibited “setting up a ‘network,’ or ‘ribbon’ of transmitting stations along a highway for the purpose of continuously attracting a motorist with what could be superfluous information.”<sup>111</sup> In response to a proposal from AASHTO to relax this restriction, the *NPRM* asked for commenters' views on either (1) allowing ribbon systems but requiring them to transmit unique information applicable to each transmitter's immediate area, or (2) allowing ribboned stations to transmit in a synchronized mode, where all TIS stations transmit the same message in unison.<sup>112</sup> With respect to the latter scenario, the *NPRM* further asked if synchronized use of ribbon systems could provide benefits that would outweigh the Commission's original intent to prevent use of TIS to transmit superfluous information.<sup>113</sup>

40. AAIRO supports allowing synchronized ribboning of TIS stations, contending that it would be “useful in alleviating congestion along a route and to manage the flow of traffic during widespread emergencies.”<sup>114</sup> AASHTO says such ribboning would “allow travelers to receive updated information before reaching the location of a traffic condition or other incident.”<sup>115</sup> Several other commenters support lifting the restriction for the same reasons.<sup>116</sup> However, San Francisco opposes ribboning as “duplicative of a 511 service.”<sup>117</sup>

41. We disagree that ribbon systems are duplicative of 511 service. TIS and 511 systems can coexist and complement each other by providing information about other means of obtaining traffic information.<sup>118</sup> We also find that the public interest lies in allowing simulcast systems of transmitters, which commenters indicate can help to manage traffic flow or provide a means of broadcasting relevant information over complex geographic terrain. Our actions today will also lower operational costs for TIS licensees without diminishing benefits to the traveling public. However, we will permit ribbon systems to be used only for transmission of travel and emergency information that is relevant to travelers in the vicinity of each transmitter in the network. While we leave it to the discretion of the TIS license holders to determine relevancy, licensees should not view this relaxation of the ribboning restriction as *carte blanche* for the simulcasting of irrelevant content over a large geographic area.

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<sup>111</sup> *TIS Report and Order*, 67 F.C.C.2d at 923-24 ¶ 23.

<sup>112</sup> *NPRM*, 25 FCC Rcd at 18128 ¶ 31. In 2009, the Commission allowed Howard County, Maryland to operate three simulcast TIS transmitters in order “to cover major commuter and evacuation routes in the County.” *See Howard County Order*, 24 FCC Rcd at 1569 ¶ 10.

<sup>113</sup> *NPRM* at 18128 ¶ 31.

<sup>114</sup> AAIRO Comments at 5, 18.

<sup>115</sup> AASHTO Comments at ii. *See also* AASHTO Comments at 9.

<sup>116</sup> *See* Gropper Comments at 3, 26-27; SHA Comments at 9; Auburn Reply Comments at 1 (“Our complex terrain decreases the efficacy of our station ... This could be easily remedied with a network of transmitters.”); Vashon Reply Comments at 1 (“current restriction on ‘ribboning’ ... do not allow us to easily reach portions of our [island] populations”); Lexington-Fayette Reply Comments at 2 (“rolling hills and geographic depressions” decrease efficacy); Pavlica Reply Comments at 1.

<sup>117</sup> San Francisco Comments at 2.

<sup>118</sup> *See* ¶18, *supra*.

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

42. Although the *NPRM* did not raise the issue, numerous commenters argue for removal of the filtering provision of Section 90.242(b)(8), which requires the filtering of TIS audio frequencies above 3 kHz. Commenters contend that the required filtering decreases the audibility of TIS broadcasts in general, and especially at night and over difficult terrain.<sup>119</sup> Burden suggests this restriction could be removed with little or no increased interference with adjacent channel broadcasters.<sup>120</sup> No commenter has opposed such removal.<sup>121</sup>

43. Accordingly, we propose to remove this requirement from the rules. Because this particular issue was not previously proposed in the *NPRM* but rather was introduced by commenters in the record, we seek comment in this Further Notice of Proposed Rulemaking in order to establish a record and consider any issues that may not have been raised in docket prior to this time. Accordingly, we ask whether there is any reason this restriction should not be removed. Is there a potential for increased interference with broadcasters? If not, are there any other reasons why we should not remove the filtering restriction? We ask that all comments for or against the lifting of this restriction provide empirical evidence for the position taken.

#### V. PROCEDURAL MATTERS

##### A. *Ex Parte* Presentations

44. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>122</sup> Persons making *ex parte*

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<sup>119</sup> See AAIRO Comments at 5, 20; Auburn Reply Comments at 1 (“current requirements to filter our TIS signal renders it useless in areas that would otherwise be easily served by the station.”); Avalon Reply Comments at 1; Cook Reply Comments at 1; Effingham Reply Comments at 1; Fairfield Reply Comments at 1 (filtering “tends to severely limit the effectiveness of the system during evening and overnight hours”); Flaherty Reply Comments at 1 (“generally renders our TIS station inaudible in the evening and over-night hours”); Hennes Reply Comments at 1 (“generally renders our TIS station inaudible in the evening and over-night hours”); Los Alamos Reply Comments at 1 (“given our challenging terrain ... we ardently support the elimination of filtering requirements”); Manville Reply Comments at 1 (“renders our TIS inaudible in the evening and over night”); Montecito Reply Comments at 1 (our topographic features “renders our signal inaudible in various areas of the community”); North Wildwood Reply Comments at 1 (eliminate the filtering requirements); Peabody Reply Comments at 1 (“renders many TIS stations inaudible”); Lexington-Fayette Reply Comments at 2 (gives broadcast an “odd” nature); Dickey County Reply Comments at 1 (“can’t wait until the 7AM news to advise motorists” of a bridge failure).

<sup>120</sup> Burden states he conducted an experiment removing the “3 kHz filter opening the transmitted response to that of the 8 kHz program line” resulting in considerable improvement of the transmitted signal “with no audible interference presented to the reception of the first adjacent.” See, Burden Reply Comments at 2. Burden further notes that “AM broadcast bandwidth specified by the NRSC-2 Spectrum Mask adopted by the FCC some time ago to resolve interference issues, limits the audio frequency response of AM broadcast transmission to 10 kHz. Limiting the bandwidth of TIS transmission to the same bandwidth as the NRSC mask should be logical. A recent study into acceptable audio bandwidths conducted by NPR Labs in an AM-DAB study for the NRSC, concluded that limitations to an audio bandwidth less than 7 kHz was not advisable for AM broadcast facilities.” *Id.* Burden notes that with “use of TIS facilities as a means of communication in emergencies, intelligibility becomes important” and “it only follows that the audio quality of the emergency message needs to be offered with the same intelligibility as that from AM radio broadcast facilities.” *Id.*

<sup>121</sup> We also note that when the Commission adopted the filtering requirement in 1977, it provided no explanation for the requirement in the *TIS Report and Order* but merely included it in the rules appendix. See *TIS Report and Order*, 67 F.C.C.2d at Appendix C.

<sup>122</sup> 47 C.F.R. §§ 1.1200 *et seq.*

(continued...)



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

#### **B. Comment Filing Procedures**

45. 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: (1) the Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). **All filings related to this Notice of Proposed Rulemaking should refer to RM-11514, PS Docket No. 09-19, and RM-11531.**

- 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 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### **C. Regulatory Flexibility Analysis**

46. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) and Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix C and the IRFA is set forth in Appendix E. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Further Notice of Proposed Rulemaking as set forth in paragraph 37, and have a separate and distinct heading designating them as responses to the IRFA.

### **D. Paperwork Reduction Act Analysis**

47. This document contains no proposed or modified information collection requirements within the meaning of the Paperwork Reduction Act of 1995, Public Law 104-13.

## **VI. ORDERING CLAUSES**

48. Accordingly, IT IS ORDERED that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 303, this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED.

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

50. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

51. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and interested parties may file reply comments on or before 45 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## List of Commenters

**Comments**

Alaska Department of Transportation and Public Facilities	Alaska
American Association of Information Radio Operators	AAIRO
American Association of State Highway and Transportation Officials	AASHTO
Daniel R. Gropper	Gropper
Metropolitan Transportation Commission (San Francisco)	MTC
National Association of Broadcasters	NAB
National Public Radio, Inc.	NPR
Ricardo Snyder	Snyder
Maryland State Highway Administration	SHA
Michael George, et al.	George
Vaisala	Vaisala

**Reply Comments**

American Association of Information Radio Operators	AAIRO
Association of Public-Safety Communications Officials-International, Inc.	APCO
City of Auburn	Auburn
City of Aurora, Illinois	Aurora
Borough of Avalon, New Jersey	Avalon
Richard W. Burden Associates	Burden
Ronald P. Cook	Cook
Effingham County, Illinois	Effingham
Fairfield, Texas	Fairfield
Mark Flaherty	Flaherty
Fort Bend County, Texas	Fort Bend
Hennes Paynter Communications	Hennes
Lexington-Fayette Urban County Government	Lexington-Fayette
Los Alamos County, New Mexico	Los Alamos
Borough of Manville, New Jersey	Manville
Mentor Fire Department	Mentor
Montecito Fire Protection District	Montecito
National Association of Broadcasters	NAB
North Wildwood Police Department	North Wildwood
Town of Ocean City, Maryland	Ocean City
Peabody, Massachusetts	Peabody
William Reynolds	Reynolds
Voice of Vashon	Vashon
Wildland Residents Association, San Marcos Pass Volunteer Fire Department	Wildland

**Late-Filed Comments**

Cohen, Dippel and Everist, P.C.	Cohen
Dickey County, North Dakota	Dickey County
Daniel R. Gropper	Gropper

John Pavlica, Jr.  
Merlyn Bartlett

Pavlica  
Bartlett

**Ex Parte Comments**

American Association of Information Radio Operators (12/18/12)  
Borough of Manasquan, New Jersey  
Monmouth Beach, New Jersey Police Dept.  
North Plainfield, New Jersey

AAIRO  
Manasquan  
Monmouth  
North Plainfield

American Association of Information Radio Operators (12/28/12)  
Burlington County, New Jersey Public Safety  
Irvine Police Dept.  
Lyndhurst, New Jersey Dept. of Public Safety  
Peabody Massachusetts Police Dept.  
San Marcos Pass Volunteer Fire Dept.  
William Reynolds

AAIRO  
Burlington  
Irvine  
Lyndhurst  
Peabody  
San Marcos  
Reynolds

Association of State Highway and Transportation Officials  
North Tahoe Fire Protection District  
Richard Phoenix

AASHTO  
North Tahoe  
Phoenix

## APPENDIX B

## Final Rules

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

**Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).**

2. Section 90.7 is amended by revising the definition of “Travelers’ information station” to read as follows:

*Travelers’ information station.* A base station in the Public Safety Pool used to transmit non-commercial, voice information pertaining to traffic and road conditions, traffic hazard and traveler advisories, directions, availability of lodging, rest stops, and service stations, and descriptions of local points of interest.

3. Section 90.242 is amended by revising paragraph (a)(7) to read as follows:

**§ 90.242 Travelers’ information stations.**

(a) \* \* \*

(7) Travelers’ Information Stations shall transmit only noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest. It is not permissible to identify the commercial name of any business establishment whose service may be available within or outside the coverage area of a Travelers’ Information Station. However, to facilitate announcements concerning departures/arrivals and parking areas at air, train, and bus terminals, the trade name identification of carriers is permitted. Travelers’ Information Stations may also transmit information in accordance with the provisions of §§ 90.405 and 90.407.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> and Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking in PS Docket 09-19 (*NPRM*). The Commission sought written comment on the proposals in the *NPRM*, including comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

**A. Need for, and Objectives of, the Report and Order**

2. This Report and Order seeks to ensure that the Commission's Travelers Information Station (TIS) rules better serve all Americans. To that end, it amends the TIS rules to directly reference sections 90.405(a)(1) and 90.407 of the Commission's rules.<sup>2</sup> These two sections allow, respectively, the use of TIS facilities for the transmission of "any communications related directly to the imminent safety-of-life or property," and for emergency communications "during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster." This Report and Order also further clarifies the permissible content under the TIS rules, indicating that such content must either continue to have a travel-related nexus, be emergency-related, or relate directly to an imminent threat. Next, this Report and Order partially removes the present restriction on so-called ribbon (*i.e.*, simulcast) networks of TIS transmitters, requiring only that simulcast transmissions be relevant to travelers in the vicinity of each transmitter in the network. Finally, this Report and Order updates the definition of TIS in Section 90.7 to replace the reference to the former Local Government Radio Service with a reference to the Public Safety Pool.

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

3. There were no comments that specifically addressed the IRFA.

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

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>3</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>4</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>5</sup> A "small business

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 47 C.F.R. §§ 90.405(a)(1) and 90.407.

<sup>3</sup> 5 U.S.C. § 604(a)(3).

<sup>4</sup> 5 U.S.C. § 601(6).

<sup>5</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

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”).<sup>6</sup>

5. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration.<sup>7</sup> As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.<sup>8</sup> Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>9</sup> Nationwide, as of 2007, there were approximately 1,621,315 small organizations.<sup>10</sup> Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>11</sup> Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.<sup>12</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>13</sup> Thus, we estimate that most governmental jurisdictions are small. However, we estimate that approximately 1,445 governmental entities hold TIS licenses, and only a subset of these entities constitute small governmental jurisdictions.<sup>14</sup>

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

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<sup>6</sup> 15 U.S.C. § 632.

<sup>7</sup> See 5 U.S.C. § 601(3)–(6).

<sup>8</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (last visited Aug. 31, 2012).

<sup>9</sup> 5 U.S.C. § 601(4).

<sup>10</sup> INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

<sup>11</sup> 5 U.S.C. § 601(5).

<sup>12</sup> U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

<sup>13</sup> The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011 – U.S. Census Bureau, available at <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

<sup>14</sup> Based on an FCC Universal Licensing System search of July 10, 2013. Search parameters: Radio Service = PW; Authorization Type = Regular; Status = Active; Frequency Upper Band >= 0.53; Frequency Assigned <= 1.7.

6. This Report and Order contains no reporting or recordkeeping requirements.

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

7. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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.”<sup>15</sup>

8. The proposed rules are designed to minimally impact all TIS participants, including small entities, while at the same time protecting the lives and property of all Americans, which confers a direct benefit on small entities. None of the rules is likely to have a significant economic impact on small entities as they either clarify or remove restrictions on the present TIS rules. As an alternative to the rule changes, the Commission considered granting an exemption from coverage of the rules to small entities. However, exemption could result in a small entity TIS licensee transmitting any content it chooses over TIS, which would dilute the public safety value of the TIS service. The Report and Order requires that permissible content under the TIS rules must continue to have a nexus to travel, an emergency, or an imminent threat of danger. Therefore, the Commission rejected this alternative.

9. **Report to Congress:** The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>16</sup> In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>17</sup>

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<sup>15</sup> 5 U.S.C. § 603(c)(1) – (c)(4).

<sup>16</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>17</sup> See 5 U.S.C. § 604(b).



**APPENDIX D****Proposed Rules**

1. The authority citation for Part 90 continues to read as follows:

**Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).**

2. Section 90.242 is amended by revising paragraph (b)(8) to read as follows:

**§ 90.242 Travelers' information stations.**

\* \* \* \* \*

(b) \* \* \*

(8) [Reserved]

## APPENDIX E

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>18</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (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 on the FNPRM provided in Section IV of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>19</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>20</sup>

**A. Need for, and Objectives of, the Further Notice of Proposed Rulemaking**

2. Today's FNPRM seeks to ensure that the Commission's Travelers Information Station (TIS) rules better serve all Americans. It seeks comment on a change to the TIS rules proposed by a petitioner and supported by several commenters. Specifically, the Commission seeks comment on removing Section 90.242(b)(8) of the Commission's rules, which requires the filtering of audio frequencies above 3 kHz. The record indicates that this requirement seriously decreases the audibility of TIS broadcasts while adding little to the protection of commercial broadcasters. However, because the filtering issue was not specifically noticed in the Notice of Proposed Rulemaking in this docket, we will request further comment on this proposed rule change.<sup>21</sup>

**B. Legal Basis**

3. Authority for the actions proposed in this FNPRM may be found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 303.

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

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>22</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>23</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>24</sup> A "small business

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<sup>18</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>19</sup> See 5 U.S.C. § 603(a).

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

<sup>21</sup> See FNPRM at ¶ 39 for a more detailed discussion of this subject.

<sup>22</sup> 5 U.S.C. § 604(a)(3).

<sup>23</sup> 5 U.S.C. § 601(6).

<sup>24</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity (continued....)"

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”).<sup>25</sup>

5. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration.<sup>26</sup> As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.<sup>27</sup> Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>28</sup> Nationwide, as of 2007, there were approximately 1,621,315 small organizations.<sup>29</sup> Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>30</sup> Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.<sup>31</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>32</sup> Thus, we estimate that most governmental jurisdictions are small. However, we estimate that approximately 1,445 governmental entities hold TIS licenses, and only a subset of these entities constitute small governmental jurisdictions.<sup>33</sup>

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

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

for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>25</sup> 15 U.S.C. § 632.

<sup>26</sup> See 5 U.S.C. § 601(3)–(6).

<sup>27</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (last visited Aug. 31, 2012).

<sup>28</sup> 5 U.S.C. § 601(4).

<sup>29</sup> INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

<sup>30</sup> 5 U.S.C. § 601(5).

<sup>31</sup> U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

<sup>32</sup> The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011 – U.S. Census Bureau, available at <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

<sup>33</sup> Based on an FCC Universal Licensing System search of July 10, 2013. Search parameters: Radio Service = PW; Authorization Type = Regular; Status = Active; Frequency Upper Band >= 0.53; Frequency Assigned <= 1.7.

### Requirements

6. There are no potential reporting or recordkeeping requirements proposed in this FNPRM. The proposals set forth in this FNPRM are intended to advance our public safety mission and enhance the performance of the TIS while reducing regulatory burdens wherever possible.

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

7. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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.”<sup>34</sup>

8. The proposed rule is designed to minimally impact all TIS participants, including small entities, while at the same time protecting the lives and property of all Americans, which confers a direct benefit on small entities. The proposed rule is unlikely to have a significant economic impact on small entities as it would simply loosen a present operational restriction on the TIS rules to allow broadcast without the filtering requirement, if that small entity so chose. As an alternative to this proposed rule change, the Commission considered the alternative of allowing TIS licensees, including small entity licensees, to file waivers of the existing rule that requires audio filtering. However, we find that our proposal to lift the filtering requirement rule is more efficient than case-by-case waivers as an administrative matter. Moreover, our proposal would allow all TIS licensees nationwide, rather than just the entities who file waivers, to provide clearer audio quality for the benefit of public safety and the traveling public. As noted in paragraph 2 above, the FNPRM seeks comment on how the Commission may better protect the lives and property of Americans. In commenting on this goal, commenters are invited to propose steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose significant alternatives that serve the goals of these proposals. We expect that the record will develop to demonstrate any significant alternatives.

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

9. None.

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<sup>34</sup> 5 U.S.C. § 603(c)(1) – (c)(4).