

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

In the Matter of)
)
Video Description: Implementation of the) MB Docket No. 11-43
Twenty-First Century Communications and)
Video Accessibility Act of 2010)

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 16, 2023

Released: March 17, 2023

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: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (FNPRM), we propose to expand our support for individuals who are blind or visually impaired and ensure they have nationwide access to video programming by expanding our audio description requirements to additional market areas. Consistent with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),¹ we propose to phase in an additional 10 designated market areas (DMAs) each year until audio description is available in all such market areas. The proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

2. Audio description makes video programming more accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”² The Commission’s audio description rules currently require certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming they distribute to consumers.³ Audio description is required in DMAs 1 through 60, pursuant to an order adopted by the Commission in 2011.⁴ In 2020, the Commission expanded the audio description requirements to DMAs 61 through 100 on a phased schedule that will be complete on January 1, 2024.⁵

¹ Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv).

² See 47 CFR § 79.3(a)(3). Audio description is typically provided through the use of a secondary audio stream, which allows the consumer to choose whether to hear the narration by switching from the main program audio to the secondary audio.

³ See *id.* § 79.3(b).

⁴ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847, 11855-56, para. 16 (2011) (*2011 Audio Description Order*) (“The rules extend the requirement . . . to major network affiliates in the 60 largest markets beginning on July 1, 2015.”).

⁵ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 35 FCC Rcd 12577 (2020) (*2020 Audio Description Order*); 47 CFR § 79.3(b)(1). In the *2020 Audio Description Order*, the Commission also modernized its terminology by

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In that Order, the Commission also committed to determining in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year.⁶ There are currently a total of 210 DMAs. Through this FNPRM, we seek comment on our proposal to expand the audio description requirements using a phased schedule until all DMAs are covered by the audio description rules. In particular, we seek comment on whether the costs associated with expansion beyond DMA 100 are reasonable and whether the consumer need for expansion outweighs such costs, including whether there are any unique circumstances applicable to these smaller markets from DMA 101 through DMA 210 that the Commission should consider. We also seek comment on what rules, procedures, or schedule adjustment the Commission could consider to balance or minimize such costs against the consumer benefits of providing nationwide audio description.

II. BACKGROUND

3. As required by section 202 of the CVAA, the Commission adopted rules in 2011 requiring certain television broadcast stations and MVPDs to provide audio description for a portion of the video programming that they offer to consumers on television.⁷ The current audio description rules require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top television markets to provide 50 hours of audio-described programming per calendar quarter during prime time or on children's programming, as well as an additional 37.5 hours of audio-described programming per calendar quarter at any time between 6 a.m. and 11:59 p.m.⁸

4. The CVAA directed the Commission to submit two reports to Congress related to audio description, and the second such report is relevant to this FNPRM. In the Second Report, the CVAA required the Commission to assess, among other topics, “the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [audio-described] programming” and “the need for additional described programming in [DMAs] outside the top 60.”⁹ The Bureau submitted the Second Report to Congress in October 2019, describing the consumer desire for application of the audio description rules outside the top 60 DMAs but stating that commenters did not offer “detailed or

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replacing the term “video description” with the synonymous term “audio description.” *See 2020 Audio Description Order*, 35 FCC Rcd at 12584-86, paras. 14-15.

⁶ *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

⁷ *2011 Audio Description Order*; 47 CFR § 79.3. In accordance with the CVAA, the *2011 Audio Description Order* reinstated with certain modifications the Commission's audio description rules that the United States Court of Appeals for the District of Columbia Circuit previously had vacated due to its finding that the Commission had insufficient authority. *See Motion Picture Ass'n of America, Inc. v. Federal Communications Comm.*, 309 F.3d 796 (D.C. Cir. 2002).

⁸ 47 CFR § 79.3(b)(1). The rules also require “[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.” *Id.* § 79.3(b)(3). In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of audio description per calendar quarter during prime time or on children's programming, as well as an additional 37.5 hours of audio description per calendar quarter at any time between 6 a.m. and 11:59 p.m., on each of the top five national nonbroadcast networks that they carry on those systems. *Id.* § 79.3(b)(4). The rules also require MVPD systems of any size to pass through audio description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming. *Id.* § 79.3(b)(5)(i)-(ii).

⁹ 47 U.S.C. § 613(f)(4)(C)(iii)(IV), (VII).

conclusive information” as to the costs of such an expansion or a station’s ability to bear those costs.¹⁰ It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable, explaining that, “[s]hould the Commission seek to expand the [audio] description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine that ‘the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable.’”¹¹

5. The CVAA provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year,” “based upon the findings, conclusions, and recommendations contained in the [Second Report],” “(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”¹² Exercising this authority, the Commission adopted a phased expansion of the audio description rules, finding that the costs of the expansion to DMAs 61 through 100 are reasonable for program owners, providers, and distributors.¹³ The audio description requirements extended to DMAs 61 through 70 on January 1, 2021, to DMAs 71 through 80 on January 1, 2022, and to DMAs 81 through 90 on January 1, 2023.¹⁴ The requirements will extend to DMAs 91 through 100 on January 1, 2024.¹⁵ Thus far, the timetable for the phased expansion has been successful, with no requests for relief under either the rule governing exemptions due to economic burden or the more general waiver rule.¹⁶

6. The *2020 Audio Description Order* also indicated that the Commission would consider in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year, after assessing the reasonableness of the associated costs.¹⁷ The Commission explained that deferring a determination on the application of the audio description rules beyond DMA 100 “will best enable us to consider the unique circumstances that may be applicable” to the smallest markets, and provides “the additional benefit of . . . any additional information gleaned from [the] practical experience” of expansion beyond DMA 60.¹⁸

¹⁰ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report to Congress, 34 FCC Rcd 9350, 9362-63, paras. 26-28 (MB 2019) (Second Report). See also *id.* at 9361, paras. 23-24 (indicating that the maximum cost of creating audio-described programming remains consistent with the Commission’s 2017 estimate of \$4,202.50 per hour, while the cost of described pre-recorded programming can be as low as \$1,000 per hour).

¹¹ *Id.* at 9363, para. 28 (quoting 47 U.S.C. § 613(f)(4)(C)(iv)(I)).

¹² 47 U.S.C. § 613(f)(4)(C)(iv).

¹³ See *2020 Audio Description Order*, 35 FCC Rcd 12577. The Commission’s audio description rules define a “video programming distributor” as “[a]ny television broadcast station licensed by the Commission and any [MVPD], and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.” 47 CFR § 79.3(a)(5). The rules also define a “video programming provider” as “[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming.” *Id.* § 79.3(a)(2). The Commission’s audio description rules do not separately define the term “owner.”

¹⁴ *Id.* § 79.3(b)(1).

¹⁵ *Id.*

¹⁶ *Id.* §§ 79.3(d), 1.3.

¹⁷ *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

¹⁸ *Id.*

III. DISCUSSION

7. Consistent with the CVAA, we propose to continue phasing in the audio description requirements for an additional 10 DMAs each year until all 210 DMAs are covered, and we invite comment on this proposal. Specifically, we invite comment on whether the costs of implementing the audio description regulations in markets 101 through 210 are reasonable.

8. We seek comment on the benefits of expanding the audio description requirements to DMAs 101 through 210. The Second Report indicated that consumers seek expansion of the audio description requirements to additional DMAs,¹⁹ and we believe that even in the smallest DMAs, our proposal will provide significant benefits to consumers who are blind or visually impaired. As the Commission has previously stated, “[i]t is indisputable that [audio] description enhances the accessibility of video programming to consumers who are blind or visually impaired.”²⁰ In addition to the benefits for consumers who are blind or visually impaired, when the Commission expanded the audio description requirements to DMAs 61 through 100, it found that “consumers who are not blind or visually impaired and live in those markets also would benefit from the expansion, such as consumers with other sensory or cognitive impairments, individuals learning the language, and those who listen to video programming while multitasking.”²¹ We invite comment on the benefits of the proposed expansion to consumers in DMAs 101 through 210. Commenters should provide specific data on the amount of audio-described programming currently available in DMAs 101 through 210, including comparing that data to the amount that would be available if the Commission were to expand the audio description requirements to such DMAs. We also invite commenters to discuss any other benefits of the proposed expansion.

9. We also seek comment on the costs of expanding the audio description requirements to DMAs 101 through 210. Specifically, the CVAA permits the Commission to extend the audio description requirements to additional DMAs “if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission.”²² When the Commission extended the audio description requirements to DMAs 61 through 100, it concluded that the costs of compliance were reasonable.²³ We thus ask commenters to discuss whether the Commission’s analysis in 2020 for DMAs 61-100 similarly applies today to DMAs 101 through 210. Specifically, have the costs of adding audio description to television programming, which held steady between 2017 and 2020, remained steady today?²⁴ We encourage commenters to provide figures demonstrating the estimated costs of complying with the audio description regulations for program owners, providers, and distributors in DMAs 101 through 210.

10. We anticipate that any cost caused by application of the audio description requirements to additional DMAs will be minimized because covered broadcasters are already required to have the equipment and infrastructure needed to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size.²⁵ In addition, we

¹⁹ Second Report, 34 FCC Rcd at 9362, para. 26.

²⁰ See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 35 FCC Rcd 4293, 4298, para. 12 (2020) (*2020 Audio Description NPRM*).

²¹ *2020 Audio Description Order*, 35 FCC Rcd at 12581-82, para. 9.

²² 47 U.S.C. § 613(f)(4)(C)(iv).

²³ *2020 Audio Description Order*, 35 FCC Rcd at 12580-81, para. 8.

²⁴ See *id.* at 12580, para. 8 (stating that the steadiness of these costs “indicat[ed] that the costs are at a level the Commission previously deemed ‘minimal’”).

²⁵ See 47 CFR § 79.2(b)(2)(ii) (requiring video programming distributors or video programming providers that create visual emergency information content and add it to the programming stream to provide an aural representation of the information on a secondary audio stream, and requiring video programming distributors to ensure

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anticipate that any such cost will be further minimized because network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed, provided the station has the necessary technical capability and is not using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.²⁶ We seek comment on this analysis. How many broadcasters in DMAs 101 through 210 currently lack the equipment or infrastructure needed to deliver a secondary audio stream, and would the costs of implementing such equipment or infrastructure be minimal? To the extent any broadcasters that currently lack the necessary equipment or infrastructure believe that the implementation costs would be significant, could this best be addressed through the existing process for exemptions due to economic burden?²⁷

11. As an alternative to expanding the audio description requirements to all DMAs 101 through 210, should the Commission consider phasing in a smaller subset of DMAs? If so, what would be the appropriate cutoff? Is there a certain DMA beyond which expansion of the audio description requirements would create unreasonable costs? Would this limitation mitigate the cost of expanding the audio description requirements? Should the Commission consider expanding to a smaller number of DMAs, such as five DMAs per year, in recognition of the fact that the markets are smaller?²⁸ If so, why and what factors would support such a modification of the phased schedule? Would such modifications of the schedule mitigate the potential costs or burden of our proposal?

12. We invite comment on any other issues relevant to our analysis of the costs of creating audio-described programming in DMAs 101 through 210. For example, when the Commission expanded the audio description requirements to DMAs 61 through 100, it “sought comment on several additional issues related to analyzing the costs, including information on the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates; whether there are any network affiliates in any DMA that do not receive programming via a network feed; whether network affiliated stations in markets 61 through 100 would be able to satisfy the audio description requirements entirely by using the programming they receive via a network feed; and whether there are differing costs incurred by stations owned by large station group owners as compared to smaller station

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that the aural representation of emergency information gets passed through to consumers); *2020 Audio Description Order*, 35 FCC Rcd at 12580, para. 8 (in concluding that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable, stating that “[c]overed broadcasters already are required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size”). As stated above, the Commission’s audio description rules define a video programming provider to include any video programming distributor, and the rules define a video programming distributor to include any Commission-licensed television broadcast station. 47 CFR § 79.3(a)(2), (5). Accordingly, television broadcasters clearly fall within the statutory reference to program providers and distributors. 47 U.S.C. § 613(f)(4)(C)(iv).

²⁶ See 47 CFR § 79.3(b)(3) (requiring network affiliated stations to “pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description”); *2011 Audio Description Order*, 26 FCC Rcd at 11850, para. 4 (noting that the pass-through requirement applies to any network-affiliated broadcast station, “regardless of its market size,” provided that the technical requirements are satisfied); Second Report, 34 FCC Rcd at 9362, para. 27; *2020 Audio Description Order*, 35 FCC Rcd at 12580-81, para. 8 (in concluding that the costs of implementing the audio description regulations in markets 61 through 100 are reasonable, stating that “network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed, which will mitigate any costs associated with the rule expansion”) (footnotes omitted).

²⁷ See 47 CFR § 79.3(d).

²⁸ See 47 U.S.C. § 613(f)(4)(C)(iv) (providing the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year” if it finds that the costs are reasonable for program owners, providers, and distributors).

group owners or single stations.”²⁹ However, commenters did not address these issues in the record at that time. To the extent any such issues are relevant to our proposed extension of the audio description requirements to DMAs 101 through 210, we invite comment.

13. If the Commission determines that the costs of implementing the audio description regulations to program owners, providers, and distributors in DMAs 101 through 210 are “reasonable,” we invite comment on the compliance deadline for the expansion. In 2020, the Commission adopted an audio description phase-in that will conclude with DMAs 91 through 100 on January 1, 2024.³⁰ Accordingly we propose to continue the phase-in with DMAs 101 through 110 on January 1, 2025, extending to 10 additional DMAs per year until the phase-in concludes with DMAs 201 through 210 on January 1, 2035, consistent with the expansion allowable under the CVAA. We invite comment on whether this approach, which provides the smallest DMAs with the longest timeframe for compliance, provides entities with sufficient time for compliance.

14. We seek comment on whether any extension of the rules to additional DMAs should be based on an updated Nielsen determination, consistent with Commission precedent and the CVAA, or whether we should consider other metrics. When the Commission expanded the application of the rules from the top 25 to the top 60 markets beginning on July 1, 2015, it did so based on updated Nielsen DMA ratings as of January 1, 2015.³¹ Similarly, when the Commission again expanded the application of the rules to the top 100 markets beginning January 1, 2021, it did so based on updated Nielsen DMA ratings as of January 1, 2020.³² We propose to now update our audio description rules to base the phased expansion as well as the current requirements on updated Nielsen DMA ratings as of January 1, 2023, and we invite comment on this proposal. We note that television broadcast stations in the top 90 markets are subject to the audio description requirements today. If we utilize updated Nielsen figures, what should be the compliance deadline for stations in a DMA that was not in the top 90 markets as of January 1, 2020, but is within the top 90 markets as of January 1, 2023? In the *2020 Audio Description Order*, we provided that stations in a DMA that was not in the top 60 markets as of January 1, 2015, but was within the top 60 markets as of January 1, 2020, must come into compliance with the audio description rules by the compliance deadline for DMAs 61 through 70.³³ Similarly, should we require here that any such station come into compliance with the audio description rules by the next phased compliance deadline, which will be the January 1, 2024 deadline applicable to DMAs 91 through 100? Should that next phased compliance deadline be based on the updated Nielsen DMA rankings, in addition to any subsequent compliance deadlines that we adopt as a result of this FNPRM? As in 2020, we expect that “using updated Nielsen data will facilitate the efficient roll out of audio description obligations to more television households,”³⁴ and we invite comment on this analysis.

15. If the Commission expands the audio description rules to additional DMAs, we propose that section 79.3(d) of our rules will govern any petitions for exemption due to economic burden.³⁵ The audio description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome.³⁶ Although

²⁹ *2020 Audio Description NPRM*, 35 FCC Rcd at 4298, para. 11; *2020 Audio Description Order*, 35 FCC Rcd at 12581, n.29.

³⁰ 47 CFR § 79.3(b)(1).

³¹ *2011 Audio Description Order*, 26 FCC Rcd at 11856, para. 16.

³² *2020 Audio Description Order*, 35 FCC Rcd at 12583, para. 11; 47 CFR § 79.3(b)(1).

³³ *2020 Audio Description Order*, 35 FCC Rcd at 12583, para. 11.

³⁴ *Id.*

³⁵ 47 CFR § 79.3(d).

³⁶ *See id.* The term “economically burdensome” means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for audio description would be (continued...)

we propose that section 79.3(d) will continue to apply to instances in which an entity seeks to demonstrate that the extension to additional DMAs is economically burdensome, we recognize that the CVAA also provides that if an expansion of the audio description rules to additional DMAs occurs, “the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”³⁷ Section 1.3 of the Commission’s rules governs waivers of the Commission’s rules generally.³⁸ Accordingly, to the extent a broadcaster subject to the extension believes it needs relief due to some reason other than economic burden, we propose that it may seek a waiver under section 1.3. We tentatively conclude that sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the audio description rules to additional DMAs, and we invite comment on this conclusion.³⁹

16. We seek information on whether there is additional information garnered from the practical experience of expanding to DMAs 61 through 100 that may inform our decision on whether to expand our requirements to DMAs 101 through 210.⁴⁰ We also seek comment on whether there are any other issues with respect to our proposal to extend the audio description rules to additional DMAs of which we should be aware.

17. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁴¹ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations⁴² and

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_____ economically burdensome: (i) the nature and cost of providing audio description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. *Id.* §§ 79.3(d)(2)(i)-(iv). In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the audio description requirements, and it evaluates economic burden with regard to the individual outlet. *Id.* § 79.3(d)(3). In the first audio description report that the Commission submitted to Congress in accordance with the CVAA, the Media Bureau stated its belief “that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015.” *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report to Congress, MB Docket No. 11-43, 29 FCC Rcd 8011, 8033, para. 49 (2014).

³⁷ 47 U.S.C. § 613(f)(4)(C)(iv)(II).

³⁸ 47 CFR § 1.3 (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

³⁹ See *2020 Audio Description Order*, 35 FCC Rcd at 12583-84, para. 12 (adopting the similar tentative conclusion that the Commission made in the context of proposing the extension to DMAs 61 through 100). We note additionally that we have not received any requests for relief under either section 79.3(d) or section 1.3 resulting from the expansion to DMAs 61 through 100.

⁴⁰ *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

⁴¹ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

⁴² The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009,

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benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

18. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁴³ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁴⁴ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this Further Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B.

19. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.⁴⁵ In addition, therefore, it does not contain any proposed new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

20. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.⁴⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

21. *Filing Requirements—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*

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Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

⁴³ *See* 5 U.S.C. § 603.

⁴⁴ *See id.* § 605(b).

⁴⁵ If the Commission adopts its proposal to extend the audio description requirements to additional DMAs, it will file a non-substantive modification to the information collection that contains section 79.3 (OMB 3060-1148) to clarify that the audio description requirements have been extended to additional DMAs.

⁴⁶ 47 CFR § 1.1200 *et seq.*

in *Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent 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.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁴⁷
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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

23. *Additional Information.* For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

V. ORDERING CLAUSES

24. **IT IS ORDERED** that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and the authority contained in section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613, this Further Notice of Proposed Rulemaking **IS ADOPTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

APPENDIX A

Proposed Rules

For ease of review, the proposed rules set forth below show amendments in **bold/underline** (for additions) and ~~strikethrough~~ (for deletions).

The Federal Communications Commission proposes to amend 47 CFR part 79 to read as follows:

PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

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

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

2. Amend § 79.3 by revising paragraph (b)(1) to read as follows:

§ 79.3 Audio description of video programming.

* * * * *

(b) * * *

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top ~~96~~**96** DMAs, as determined by The Nielsen Company as of January 1, 202~~30~~**30**, must provide 50 hours of audio description per calendar quarter, either during prime time or on children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a previously unaffiliated station in one of these markets becomes affiliated with one of these networks, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized. On January 1, 202~~41~~**41**, and on January 1 each year thereafter until January 1, 202~~43~~**35**, the requirements of this paragraph (b)(1) shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 202~~30~~**30**, as follows: ~~On January 1, 2021, the requirements shall extend to DMAs 61 through 70; on January 1, 2022, the requirements shall extend to DMAs 71 through 80; on January 1, 2023, the requirements shall extend to DMAs 81 through 90; and on January 1, 2024, the requirements shall extend to DMAs 91 through 100;~~

* * * * *

APPENDIX B**Initial Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on 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 indicated on the first page of the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. In the FNPRM, we propose to expand our support for individuals who are blind or visually impaired and ensure they have nationwide access to video programming by expanding our audio description requirements to additional market areas. Audio description makes video programming more accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”⁴ The Commission’s audio description rules require certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming they distribute to consumers.⁵ In 2011, the Commission required audio description in designated market areas (DMAs) 1 through 60.⁶ In 2020, the Commission expanded the audio description requirements to DMAs 61 through 100 on a phased schedule that will be complete on January 1, 2024.⁷ In that Order, the Commission also committed to determining in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year.⁸

3. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year,” “based upon the findings, conclusions, and recommendations

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ See 47 CFR § 79.3(a)(3). Audio description is typically provided through the use of a secondary audio stream, which allows the consumer to choose whether to hear the narration by switching from the main program audio to the secondary audio.

⁵ See *id.* § 79.3(b).

⁶ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847, 11855-56, para. 16 (2011) (*2011 Audio Description Order*) (“The rules extend the requirement . . . to major network affiliates in the 60 largest markets beginning on July 1, 2015.”).

⁷ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 35 FCC Rcd 12577 (2020) (*2020 Audio Description Order*); 47 CFR § 79.3(b)(1). In the *2020 Audio Description Order*, the Commission also modernized its terminology by replacing the term “video description” with the synonymous term “audio description.” See *2020 Audio Description Order*, 35 FCC Rcd at 12584-86, paras. 14-15.

⁸ *Id.* at 12584, para. 13.

contained in the [Second Report],” “(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”⁹ Consistent with the CVAA, we propose to phase in an additional 10 DMAs each year until audio description is available in all such market areas. There are currently 210 DMAs. The proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

B. Legal Basis

4. The authority for the action proposed in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613.

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

5. 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 proposed rules, if adopted.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹³ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”¹⁴ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁵ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.¹⁶ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

⁹ Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv).

¹⁰ 5 U.S.C. § 603(b)(3).

¹¹ *Id.* § 601(6).

¹² *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 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).

¹³ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹⁴ See U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting,”* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹⁵ *Id.*

¹⁶ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.¹⁷ Of that number, 657 firms had revenue of less than \$25,000,000.¹⁸ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

7. As of December 31, 2022, there were 1,375 licensed commercial television stations.¹⁹ Of this total, 1,282 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Media Access Pro Online Television Database (MAPro) on January 13, 2023,²⁰ and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2022, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,912 LPTV stations and 3,122 TV translator stations.²¹ The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²² 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.²³ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁴ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁵

¹⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁹ *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022) (*December 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>.

²⁰ BIA Advisory Services, BIAKelsey Media Access Pro Online Television Database, <http://www.biakelsey.com/data-platforms/media-access-pro> (last visited on Jan. 13, 2023).

²¹ *Broadcast Station Totals as of December 31, 2022*, Public Notice, DA 22-721 (rel. Jan. 11, 2022) (*December 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2022>.

²² See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²³ *Id.*

²⁴ *Id.*

²⁵ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁷ Of this number, 2,964 firms operated with fewer than 250 employees.²⁸ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.²⁹ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.³⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.³¹ The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.³² The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.³³ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.³⁴ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.³⁵ Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.³⁶ Based on this data, the Commission estimates that a majority of firms in this industry are small.

11. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its

²⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁹ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

³⁰ *Id.*

³¹ See U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

³² *Id.*

³³ *Id.*

³⁴ See 13 CFR § 121.201, NAICS Code 515210.

³⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

³⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.³⁷ Based on industry data, there are about 420 cable companies in the U.S.³⁸ Of these, only seven have more than 400,000 subscribers.³⁹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁴⁰ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.⁴¹ Of these, about 639 have more than 15,000 subscribers.⁴² Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

12. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴³ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.⁴⁴ Based on industry data, only six cable system operators have more than 677,000 subscribers.⁴⁵ Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁴⁶ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed

³⁷ 47 CFR § 76.901(d).

³⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

³⁹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

⁴⁰ 47 CFR § 76.901(c).

⁴¹ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

⁴² S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

⁴³ 47 U.S.C. § 543(m)(2).

⁴⁴ *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN*, the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

⁴⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

⁴⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.⁴⁷ Transmission facilities may be based on a single technology or combination of technologies.⁴⁸ 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.⁴⁹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁵⁰

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵¹ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.⁵² Of this number, 2,964 firms operated with fewer than 250 employees.⁵³ Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.⁵⁴ DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

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

15. The FNPRM proposes certain new or revised reporting, recordkeeping, or other compliance requirements that would be applicable to small entities. Specifically, it proposes phasing in the existing audio description requirements for an additional 10 DMAs each year, beginning with DMAs 101 through 110 on January 1, 2025 and continuing until all 210 DMAs are covered, which will be on January 1, 2035. The substance of the audio description requirements would not change, but rather, this would be an expansion of the DMAs in which broadcast television stations are required to comply with the requirements. In determining the deadline applicable to each DMA, the FNPRM proposes that the Commission should base the extension on an updated Nielsen determination. Finally, if the Commission

⁴⁷ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁸ *Id.*

⁴⁹ See *id.* Included in this industry are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

⁵⁰ *Id.*

⁵¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁴ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

expands the audio description requirements to additional DMAs, the FNPRM proposes that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden, and the FNPRM also states that section 1.3 of the Commission's rules governs waivers of the Commission's rules generally. In section E below we describe steps taken to minimize the impact on small entities.

16. The Commission is not in a position to determine whether, if adopted, phasing in the existing audio description requirements for an additional 10 DMAs each year until all 210 DMAs are covered will require small entities to hire professionals to comply, and cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. To help the Commission more fully evaluate the cost of compliance, in the FNPRM we seek comment on any other issues relevant to our analysis of the costs, "including information on the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates; whether there are any network affiliates in any DMA that do not receive programming via a network feed; whether network affiliated stations in markets [101] through [210] would be able to satisfy the audio description requirements entirely by using the programming they receive via a network feed; and whether there are differing costs incurred by stations owned by large station group owners as compared to smaller station group owners or single stations."⁵⁵ Comments should be accompanied by specific data and analysis supporting claimed costs and benefits. In addition, we seek comment on whether there is any additional information garnered from the practical experience of expanding to DMAs 61 through 100 that may inform our decision, and on any other issues related to phasing in the existing audio description requirements for additional DMAs. We expect the comments that we receive from the parties in the proceeding, including cost and benefit analyses, to help the Commission identify and evaluate compliance costs and burdens for small entities that may result from the matters discussed in the FNPRM.

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

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for 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."⁵⁶

18. The FNPRM proposes rules intended to expand consumer access to audio-described programming. When the Commission expanded the audio description requirements to DMAs 61 through 100, it indicated that the Commission would consider in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year, after assessing the reasonableness of the associated costs.⁵⁷ Thus, the FNPRM focuses on engaging in a cost-benefit analysis to determine the effects the expansion would have. It invites comment on whether the costs of implementing the audio description regulations in markets 101 through 210 are reasonable. The FNPRM explains that we anticipate any cost would be minimized because covered broadcasters are already required to have the equipment and infrastructure needed to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size. In addition, it states that we anticipate that any cost would be further minimized because network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed, provided the station has the necessary technical capability and is not using the technology used to provide audio

⁵⁵ See *2020 Audio Description Order*, 35 FCC Rcd at 12581, n.29.

⁵⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

⁵⁷ *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

description for another purpose related to the programming that would conflict with providing the audio description. The FNPRM states that even in the smallest DMAs, the Commission believes that the proposal will provide significant benefits to consumers who are blind or visually impaired. Comments on the FNPRM will help us evaluate the benefits and costs of the proposed expansion and whether the costs would be reasonable.

19. Additionally, the Commission has made proposals that would minimize the impact of the rules on small entities. First, by proposing to continue the phase-in by extending the requirements to an additional 10 DMAs per year, the Commission will ensure that the smallest DMAs have the longest timeframe for compliance. As an alternative to expanding the audio description requirements to all DMAs 101 through 210, the FNPRM also asks if the Commission should phase in a smaller subset of DMAs, and if the Commission should consider expanding to a smaller number of DMAs each year, such as five, both of which could mitigate the costs of the expansion. Second, by discussing application of exemption and waiver procedures, the Commission ensure that there will be a means of relief for all entities, including smaller entities. Specifically, the FNPRM proposes that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden. The audio description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome. The FNPRM also states that section 1.3 of the Commission's rules governs waivers of the Commission's rules generally. Small entities will be able to seek relief from the proposed expansion in appropriate situations in accordance with sections 79.3(d) and 1.3, just as they are able to under the current audio description requirements. The FNPRM tentatively concludes that sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the audio description rules to additional DMAs, and it invites comment on this conclusion.

20. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the FNPRM. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

21. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Further Notice of Proposed Rulemaking (March 16, 2023)

So many shows, so little time. That is what it feels like for most of us turning on the television today. But if you are one of the millions of people in this country with vision loss, what you can watch depends on the availability of audio description. This is a technology that inserts narrated descriptions of the key visual elements of a television program during the natural pauses in dialogue. It helps those who are blind or visually impaired follow along so that they do not miss facial expressions, physical gags, or key scene changes.

It was more than a decade ago that Congress made audio description generally available when it passed the Twenty-First Century Communications and Video Accessibility Act. It's a law I know well because I worked on it as counsel to the United States Senate Committee on Commerce, Science and Transportation. When it was passed, it required that the Commission make audio description available on programming in the largest 60 television markets across the country. A little over two years ago, the Commission expanded this requirement to roll it out to the largest 100 television markets. Today we propose to finish the job by reaching all 210 markets in the United States. In other words, we want to deliver to everyone, everywhere on the promise of this law—so let's get to it. After all, there is a lot of programming out there to watch.

Thank you to the staff who worked on this effort, including Hillary DeNigro, Maria Mullarkey, and Diana Sokolow from the Media Bureau; Diane Burstein, Will Schell, Suzy Singleton, and Ross Slutsky from the Consumer and Governmental Affairs Bureau; and Susan Aaron, Dave Konczal, and Bill Richardson from the Office of General Counsel.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Further Notice of Proposed Rulemaking (March 16, 2023)

I frequently speak about the importance of ensuring that all Americans have access to communications technology. Universal service is the cornerstone of the law that established the FCC, the Communications Act of 1934, and that principle – understood broadly – underlies many of our actions to this day. From administering and conducting outreach for the Affordable Connectivity Program, to regulating and funding telecommunications relay services, to expanding and enforcing closed captioning and audio description requirements – all of these efforts are motivated by that long-term, animating principle.

So it's only appropriate that today we make a long-term commitment to bringing the benefit of audio description to all Americans who are blind or visually impaired, wherever they live. This technology makes video accessible by inserting narrative descriptions of key visual elements into television programming, so that everyone can appreciate moments like costuming choices, facial expressions, and visual gags. We've seen – and reported to Congress on – audio description's benefits in the largest markets. Today, consistent with our prior actions and as contemplated by the Twenty-First Century Communications and Video Accessibility Act, or CVAA, we propose to bring those benefits to all 210 DMAs – the entire country – on a phased approach. Or to put it another way, we propose to make the service of audio description universal.

My thanks to the staff of the Media Bureau for their ongoing oversight of the reinstatement and expansion of the audio description requirements under the CVAA over the last decade plus, and for their good work on this item. It has my strong support.