

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

In the Matter of
Accessibility of User Interfaces, and Video
Programming Guides and Menus
MB Docket No. 12-108

SECOND REPORT AND ORDER, ORDER ON RECONSIDERATION, AND SECOND
FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: November 18, 2015

Released: November 20, 2015

Comment Date: (20 days after date of publication in the Federal Register)
Reply Comment Date: (30 days after date of publication in the Federal Register)

By the Commission: Commissioner Pai approving in part, concurring in part, and issuing a statement.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION 1
II. BACKGROUND 5
III. SECOND REPORT AND ORDER 6
A. Usability and Information, Documentation, and Training Requirements 6
B. Notifications 15
1. Equipment Manufacturer Notifications under Sections 204 and 205 15
2. MVPD Notifications under Section 205 23
C. Program Information for PEG Channels 25
IV. ORDER ON RECONSIDERATION 27
A. Activation of Closed Captioning by Voice Control 28
B. Activation of Closed Captioning and Video Description by Gesture Control 31
V. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING 33
VI. PROCEDURAL MATTERS 41
A. Regulatory Flexibility Act 41
B. Paperwork Reduction Act 43
C. Congressional Review Act 45
D. Ex Parte Rules 46
E. Filing Requirements 47
F. Additional Information 50
VII. ORDERING CLAUSES 51
APPENDIX A - List of Commenters
APPENDIX B - Final Rules
APPENDIX C - Final Regulatory Flexibility Act Analysis
APPENDIX D - Proposed Rules
APPENDIX E - Initial Regulatory Flexibility Act Analysis

I. INTRODUCTION

1. In October 2013, the Commission adopted rules that advance the important goal of making video programming accessible to individuals with disabilities on a wide range of consumer

devices, allowing consumers who are blind or visually impaired and deaf or hard of hearing to more fully enjoy the benefits of such programming. In this *Second Report and Order and Order on Reconsideration* (“*Order*”), we take additional steps to fulfill this goal by continuing the Commission’s implementation of Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), which mandate the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming.¹

2. This *Order* addresses three areas in which the Commission sought comment in the *Further Notice of Proposed Rulemaking* (“*Further Notice*”) that accompanied the first *Report and Order* issued in this proceeding.² First, it implements Section 204’s requirement that both the “appropriate built-in apparatus functions” and the “on-screen text menus or other visual indicators built in to the digital apparatus” to access such functions be “usable by individuals who are blind or visually impaired”³ by relying on the Commission’s existing definition of “usable” in Section 6.3(l) of our rules.⁴ In addition, it adopts information, documentation, and training requirements comparable to those in Section 6.11 of our rules for entities covered by both Section 204 and Section 205 of the CVAA.⁵ Second, it adopts consumer notification requirements for equipment manufacturers of digital apparatus and navigation devices that will require manufacturers to publicize the availability of accessible devices on manufacturer websites that must be accessible to those with disabilities. While multichannel video programming distributors (“MVPDs”) are already subject to website notification requirements pursuant to the rules we adopted in the *Report and Order*, the *Order* also requires MVPDs, as well as manufacturers, to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. Finally, the *Order* declines to adopt a requirement that MVPDs include more detailed program information for public, educational, and governmental (“PEG”) channels in their video programming guides, finding that such a requirement is outside the scope of Section 205 of the CVAA.

3. Addressing a Petition for Reconsideration filed by several consumer and academic organizations,⁶ the *Order* modifies our decision in the *Report and Order* by finding that, when a voice

¹ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified at 47 U.S.C. §§ 303(aa), 303(bb)). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). The foregoing are collectively referred to herein as the CVAA.

² *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-108, 12-107, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 17330, 17413-20, ¶¶ 138-52 (2013) (“*Report and Order and Further Notice*”). The Commission also inquired in the *Further Notice* whether to require manufacturers of apparatus covered by Section 203 of the CVAA to provide access to the secondary audio stream for audible emergency information by a mechanism reasonably comparable to a button, key, or icon. *Id.* at 17417-18, ¶¶ 145-47. The Commission addressed this issue in a recent order in MB Docket No. 12-107. See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 12-107, Second Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 5186 (2015).

³ 47 U.S.C. §§ 303(aa)(1)-(2).

⁴ 47 C.F.R. § 6.3(l). The 6.3(l) definition of “usable” requires that “individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities.” *Id.*

⁵ *Id.* § 6.11.

⁶ Petition for Reconsideration of the National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults,

(continued....)

control is the sole means of activation for closed captioning, it will not be considered “reasonably comparable to a button, key, or icon” under Sections 204 or 205 due to the difficulty many people who are deaf and hard of hearing would encounter in using such an activation mechanism. At the same time, the *Order* finds that closed captioning and video description activation mechanisms relying on gesture control will be considered “reasonably comparable to a button, key, or icon” if they are simple and easy to use.

4. In the accompanying *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”), we seek comment on a proposal to adopt rules that would require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning.

II. BACKGROUND

5. Among the CVAA’s mandates is a requirement that the Commission adopt rules to ensure the accessibility of the user interfaces and video programming guides and menus for digital apparatus and navigation devices.⁷ The CVAA also required the Commission to establish an advisory committee known as the Video Programming Accessibility Advisory Committee (“VPAAC”),⁸ which submitted its statutorily mandated report addressing user interfaces and video programming guides and menus to the Commission on April 9, 2012.⁹ The Commission issued an *NPRM* in this proceeding on May 30, 2013,¹⁰ and adopted the *Report and Order and Further Notice* on October 29, 2013.¹¹ In the *NPRM* and the *Report and Order*, the Commission provided extensive background information regarding the history of the applicable provisions of the CVAA and the *VPAAC Second Report: User Interfaces*.¹² The *Report and Order and Further Notice* were published in the *Federal Register* on December 20, 2013.¹³ Covered entities must comply with the rules adopted in the *Report and Order* by December 20,

(Continued from previous page) _____
 Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, Technology Access Program Gallaudet University, filed Jan. 20, 2014 (“Consumer/Academic Groups Petition”). A substantially similar group of organizations, which included Telecommunication-RERC, but not Technology Access Program Gallaudet University, filed comments and reply comments in response to the *Further Notice* (“Consumer/Academic Groups Comments” and “Consumer/Academic Groups Reply”). See Appendix A. Hereinafter, both groups of organizations will be collectively referred to as the “Consumer/Academic Groups.”

⁷ Pub. L. No. 111-260, §§ 204, 205.

⁸ *Id.* § 201(e)(2). Section 201(e)(2) of the CVAA also required the report to include information related to the provision of emergency information and video description, which is part of a separate Commission rulemaking proceeding that addresses Sections 202 and 203 of the CVAA. See *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket Nos. 12-107, 11-43, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 4871 (2013) (“*Emergency Information/Video Description Order*”).

⁹ *Second Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010: User Interfaces, and Video Programming Guides and Menus*, Apr. 9, 2012, available at <http://apps.fcc.gov/ecfs/document/view?id=7021913531> (“*VPAAC Second Report: User Interfaces*”).

¹⁰ See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Notice of Proposed Rulemaking, 28 FCC Rcd 8506 (2013) (“*NPRM*”).

¹¹ See *supra* note 2.

¹² *NPRM*, 28 FCC Rcd at 8507-08, ¶¶ 2-4; *Report and Order and Further Notice*, 28 FCC Rcd at 17335-37, ¶¶ 8-11.

¹³ Federal Communications Commission, 47 CFR Part 79, *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Final Rule, 78 Fed. Reg. 77210 (Dec. 20, 2013); Federal Communications Commission, 47 CFR Part 79, *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency*

(continued....)

2016, subject to certain exceptions.¹⁴ Consumer/Academic Groups filed a timely petition for reconsideration within 30 days of the *Federal Register* publication date.¹⁵

III. SECOND REPORT AND ORDER

A. Usability and Information, Documentation, and Training Requirements

6. *Section 204 Digital Apparatus.* We will rely on the Commission's existing definition of "usable" in Section 6.3(l) of our rules to implement Section 204's requirement that both the "appropriate built-in apparatus functions" and "on-screen text menus or other visual indicators built in to the digital apparatus" to access such functions be "usable by individuals who are blind or visually impaired."¹⁶ The 6.3(l) definition of "usable" requires that "individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities."¹⁷ Consistent with the language in Section 204 of the CVAA, the Commission required in the *Report and Order* that covered digital apparatus, "if achievable . . . be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired."¹⁸ The Commission also required, as mandated by Section 204 of the CVAA, that on-screen text menus or other visual indicators used to access the appropriate built-in apparatus functions "be accompanied by audio output . . . so that such menus or indicators are accessible to and usable by individuals who are blind or visually impaired in real-time."¹⁹ While the *Report and Order* specified *accessibility* requirements, *i.e.*, how covered entities should make the appropriate built-in functions "accessible," the *Further Notice* sought comment on *usability* requirements, *i.e.*, how covered entities should make the appropriate built-in functions "usable."²⁰ Specifically, the *Further Notice* inquired whether to adopt the definition of "usable" set forth in Section 6.3(l) of our rules and whether to impose information, documentation, and training requirements consistent with those set forth in Section 6.11 of our rules.²¹

7. Relying on the existing definition of usability in Section 6.3(l), we require manufacturers

(Continued from previous page) _____
Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Proposed Rule, 78 Fed. Reg. 77074 (Dec. 20, 2013).

¹⁴ See 47 C.F.R. §§ 79.107(b), 79.108(b), 79.109(c). See also *Report and Order and Further Notice*, 28 FCC Rcd at 17399-405, ¶¶ 111-19.

¹⁵ 47 C.F.R. § 1.429(d). The Consumer Electronics Association, Entertainment Software Association, National Cable & Telecommunications Association, and Telecommunications Industry Association each filed oppositions to the Petition for Reconsideration, and Consumer/Academic Groups filed a reply.

¹⁶ 47 U.S.C. §§ 303(aa)(1)-(2).

¹⁷ 47 C.F.R. § 6.3(l).

¹⁸ *Report and Order and Further Notice*, 28 FCC Rcd at 17363, ¶ 53. The appropriate built-in apparatus functions are those that are used for the reception, play back, or display of video programming and, at this time, include the following functions: power on/off; volume adjust and mute; channel/program selection; display channel/program information; configuration—setup; configuration—CC control; configuration—CC options; configuration—video description control; display configuration info; playback functions; and input selection. *Id.* at 17366-68, ¶ 58; 47 C.F.R. §§ 79.107(a)(4)(i)-(xi). The Commission has stated that it "may revisit this list if and when technology evolves to a point where devices incorporate new user functions related to video programming that were not contemplated by the VPAAC." *Report and Order and Further Notice*, 28 FCC Rcd at 17368, ¶ 59.

¹⁹ *Report and Order and Further Notice*, 28 FCC Rcd at 17363, ¶ 53.

²⁰ *Id.* at 17413-14, ¶ 138.

²¹ *Id.* at 17413-15, ¶¶ 138-39.

of Section 204 digital apparatus to ensure that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities.²² Industry and academic commenters were united in their support of our proposal to rely on the Section 6.3(l) usable definition to implement Section 204.²³ As the *Further Notice* stated, the Commission has relied on the Section 6.3(l) definition in other CVAA contexts,²⁴ and, given the agreement in the record on this point, we see no reason to depart from that approach here. The Consumer Electronics Association (“CEA”) asks that we “clarify” that application of the usability requirement under Section 204 to the “appropriate” built-in functions of covered digital apparatus only applies “to the extent the apparatus includes those functions.”²⁵ We agree with CEA that such an approach would be consistent with the Commission’s approach in the *Report and Order* and adopt it here. Under the standard set forth in the *Report and Order* when implementing Section 204, a digital apparatus manufacturer is required to make an “appropriate built-in apparatus function” of a digital apparatus accessible only to the extent such function is “included in the device.”²⁶ Similarly, a digital apparatus manufacturer will be required under Section 204 to make usable an “appropriate built-in apparatus function”²⁷ or an on-screen text menu or other visual indicator that is used to access such function²⁸ only to the extent it is included in the device.

8. In addition to implementing the usability requirement of Section 204, we also adopt information, documentation, and training requirements consistent with those set forth in Section 6.11 of our rules. As noted in the *Further Notice*, the Commission “adopted information, documentation, and training requirements when implementing Sections 716 and 718” of the Communications Act of 1934, as amended (“Act”),²⁹ which impose accessibility requirements on providers and manufacturers with respect to advanced communications services and equipment and Internet browsers on mobile phones and, like Section 204, require that covered products be “accessible to and usable by” individuals with disabilities.³⁰ Section 6.11 requires that manufacturers “ensure access to information and documentation it provides to

²² 47 C.F.R. § 6.3(l). The Commission adopted the definition of “usable” in Section 6.3(l) of its rules pursuant to Section 255 of the Communications Act of 1934, as amended, which requires telecommunications providers and equipment manufacturers to make their products “accessible to and usable by” persons with disabilities. See *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6429-30, ¶¶ 21-29 (1999).

²³ See Comments of the Consumer Electronics Association at 2-3 (“CEA Comments”); Comments of DISH Network L.L.C. and EchoStar Technologies L.L.C. at 2 (“DISH/EchoStar Comments”); Reply Comments of Rehabilitation Engineering Research Center for Wireless Technologies at 4 (“Wireless RERC Reply”).

²⁴ *Report and Order and Further Notice*, 28 FCC Rcd at 17414, ¶ 138 (discussing the Commission’s reliance on the Section 6.3(l) usable definition when implementing Sections 255, 716, and 718 of the Communications Act).

²⁵ CEA Comments at 3.

²⁶ *Report and Order and Further Notice*, 28 FCC Rcd at 17366, ¶ 58. See also *id.* at 17369-70, ¶ 60 (“[A]n apparatus covered by Section 204 is not required to *include* all 11 functions deemed to be ‘appropriate,’ understanding that some of these functions may not be provided for any users on certain devices. We agree with commenters that Section 204 ‘do[es] not mandate the inclusion of any specific functions’ in the design of a covered apparatus. However, to the extent that an apparatus is designed to include an ‘appropriate’ built-in apparatus function, such function must be made accessible in accordance with our rules.”) (citations omitted).

²⁷ 47 U.S.C. § 303(aa)(1).

²⁸ *Id.* § 303(aa)(2).

²⁹ *Id.* §§ 617, 619. See also Pub. L. No. 111-260, § 104 (adding Sections 716 and 718 of the Act).

³⁰ *Report and Order and Further Notice*, 28 FCC Rcd at 17414, ¶ 139; 47 C.F.R. § 14.20(d).

its customers.”³¹ Such information and documentation “includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product.”³² In addition, Section 6.11 requires manufacturers to include the contact method for obtaining the information required by Section 6.11(a) in general product information, to consider certain accessibility-related topics when developing or modifying training programs, and to take other steps, as necessary.³³ We agree with the Rehabilitation Engineering Research Center for Wireless Technologies (“Wireless RERC”) that imposing these requirements in this context as well will provide a consistent experience for individuals with disabilities regardless of the product they are purchasing.³⁴

9. We disagree with the argument made by CEA and DISH Network L.L.C./EchoStar Technologies L.L.C. (“DISH/EchoStar”) that imposing information, documentation, and training requirements will be redundant with the usability requirements in Section 6.3(l) that we adopt herein.³⁵ While Section 6.3(l) provides a definition of usability in the definitional section of our rules, Section 6.11 outlines the specific actions that covered entities must take to provide access by people with disabilities to information and documentation, as well as information to be considered for inclusion in an appropriate manufacturer training program.³⁶ Thus, for example, Section 6.11 directs manufacturers to provide access to “user guides, bills, installation guides . . . and product support communications.”³⁷ In addition, it directs manufacturers to provide “a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge,”³⁸ and to ensure usable customer and technical support in call centers and service centers at no additional charge.³⁹ With respect to training, Section 6.11 states that manufacturers shall consider various topics, including the accessibility requirements of, and means of communicating with, people with disabilities; adaptive technology commonly used by people with disabilities; and designs and solutions for accessibility.⁴⁰ Therefore, we find that the information, documentation, and training requirements found in Section 6.11 are not redundant with the usability requirements in Section 6.3(l), but set forth a more specific set of obligations to which the manufacturers of Section 204 apparatus must adhere. Thus, we apply these requirements to entities covered by Section 204.

10. *Section 205 Navigation Devices.* We also adopt the information, documentation, and training requirements outlined in Section 6.11 of our rules as part of entities’ obligations under Section 205. In the *Further Notice*, we inquired whether we should impose Section 6.11 information, documentation, and training requirements on entities covered by Section 205, which applies to navigation

³¹ 47 C.F.R. § 6.11(a).

³² *Id.*

³³ *Id.* §§ 6.11(a)-(c).

³⁴ See Wireless RERC Reply at 4. See also Comments of Verizon and Verizon Wireless at 3 (“Verizon Comments”).

³⁵ CEA Comments at 4; Reply Comments of the Consumer Electronics Association at 8-9 (“CEA Reply”); DISH/EchoStar Comments at 3.

³⁶ 47 C.F.R. § 6.11.

³⁷ *Id.* § 6.11(a).

³⁸ *Id.* § 6.11(a)(1). Similarly, manufacturers must “provid[e] end-user product documentation in alternate formats or alternate modes upon request at no additional charge.” *Id.* § 6.11(a)(2).

³⁹ *Id.* § 6.11(a)(3).

⁴⁰ *Id.* § 6.11(c).

devices, pursuant to our authority to “prescribe such regulations as are necessary to implement” the requirements of that section.⁴¹

11. We find that Section 205 of the CVAA provides the Commission with sufficient authority to adopt information, documentation, and training requirements. CEA, the National Cable & Telecommunications Association (“NCTA”), and the American Cable Association (“ACA”) point out that Section 205 does not include the Section 204 “accessible to and usable by” language that the Commission has relied upon in the past to adopt information, documentation, and training requirements and, therefore, they question the Commission’s statutory authority to adopt such requirements in the Section 205 context.⁴² We disagree with industry’s arguments. Section 205 requires that on-screen text menus and guides provided by navigation devices are “audibly accessible” by individuals who are blind or visually impaired.⁴³ In addition, Section 205(b)(1) empowers the Commission to “prescribe such regulations as are necessary to implement” the requirements of Section 205.⁴⁴ If consumers do not know how to access a feature then, as a practical matter, it is not “accessible.”⁴⁵ Information, documentation, and training requirements are thus necessary for individuals with disabilities to be able to operate navigation devices that are made accessible in accordance with the requirements of Section 205. As described above, such requirements ensure that persons with disabilities are provided with accessible product information and documentation, such as user guides, bills, installation guides, and product support communications, with a description of the accessibility features of the device upon request,⁴⁶ and with customer and technical support in call centers and service centers.⁴⁷ While we note that under the rule, covered entities are required to provide a description of accessibility features and product documentation “upon request” by the consumer,⁴⁸ we will treat a consumer’s request for an accessible navigation device pursuant to Section 205 to also constitute a request for a description of the accessibility features of the device and end-user product documentation in accessible formats so that the consumer is able to operate the device. Such requirements also ensure that manufacturers and service providers consider various accessibility-related topics when designing training programs.⁴⁹ We believe that these requirements are necessary for individuals with disabilities to have access to the accessibility features and functionality of Section 205 accessible navigation devices and to fully obtain the benefits of these devices.⁵⁰ While these requirements

⁴¹ *Report and Order and Further Notice*, 28 FCC Rcd at 17414-15, ¶ 139. *See also* Pub. L. No. 111-260, § 205(b)(1).

⁴² *See* CEA Comments at 5; CEA Reply at 9. *See also* Comments of the National Cable & Telecommunications Association at 7 (“NCTA Comments”); Reply Comments of the National Cable & Telecommunications Association at 8 (“NCTA Reply”); Reply Comments of the American Cable Association at 3-4 (“ACA Reply”).

⁴³ 47 U.S.C. § 303(bb)(1).

⁴⁴ *See* Pub. L. No. 111-260, § 205(b)(1). *See also Report and Order and Further Notice*, 28 FCC Rcd at 17414-15, ¶ 139.

⁴⁵ For these reasons, we reject ACA’s argument that the Commission cannot rely on its authority to “prescribe such regulations as are necessary to implement” the requirements of Section 205 to adopt information, documentation, and training requirements, or that imposing such a requirement would lead to an inconsistent interpretation of the CVAA. *See* ACA Reply at 4 & n. 10.

⁴⁶ Specifically, Section 6.11(a) requires covered entities to provide “a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge,” and to provide “end-user product documentation in alternate formats or alternate modes upon request at no additional charge.” 47 C.F.R. §§ 6.11(a)(1)-(2).

⁴⁷ *Id.* §§ 6.11(a)(1)-(3).

⁴⁸ *Id.* §§ 6.11(a)(1)-(2).

⁴⁹ *Id.* § 6.11(c).

⁵⁰ *See* Wireless RERC Reply at 4-5.

broadly outline the steps covered entities must take to ensure access to information, documentation, and training for persons with disabilities, covered entities have flexibility to implement these requirements within the guidelines set forth in the rule.

12. Further, we disagree with CEA, NCTA, and DISH/EchoStar's argument that information, documentation, and training requirements will not be necessary because Section 205 navigation devices are provided upon request and the notification requirements already adopted under Section 205 in the *Report and Order* will be sufficient to ensure that consumers are able to obtain accessible navigation devices.⁵¹ Those notification requirements focus on ensuring that consumers with disabilities are provided with information about the availability of accessible navigation devices and how to obtain such devices.⁵² In contrast, the information, documentation, and training requirements that we adopt herein focus on ensuring that consumers with disabilities are provided with information about how to operate the accessibility features and functions of such devices in an accessible format and are provided with appropriate customer support for such devices. Thus, we find that the notification requirements already adopted in the *Report and Order* do not obviate the need for adopting information, documentation, and training requirements as set forth in Section 6.11, and we apply these requirements to entities covered by Section 205.

13. *Achievability.* We find that the usability requirement applicable to Section 204 devices and the information, documentation, and training requirements applicable to Section 204 and 205 devices adopted herein apply only "if achievable," meaning "with reasonable effort or expense, as determined by the Commission."⁵³ Section 303(aa)(1) of the Act indicates that apparatus covered by Section 204 are required to make appropriate built-in apparatus functions accessible to and usable by individuals who are blind or visually impaired only "if achievable."⁵⁴ Similarly, Section 303(bb)(1) requires on-screen text menus and guides for the display or selection of multichannel video programming on navigation devices covered by Section 205 to be audibly accessible by individuals who are blind or visually impaired only "if achievable."⁵⁵ The Commission will determine whether compliance is "achievable" on a case-by-case basis, consistent with the approach adopted in the *Report and Order*.⁵⁶ In particular, the Commission will consider the following factors in determining whether compliance with the usability and information, documentation, and training requirements are achievable in particular circumstances: (1) the nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question; (2) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (3) the type of operations of the manufacturer or provider; and (4) the extent to which the service provider or manufacturer in question

⁵¹ See CEA Comments at 5; CEA Reply at 8; DISH/EchoStar Comments at 3-4; NCTA Comments at 7-8; NCTA Reply at 8.

⁵² Under Section 205, MVPDs must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request. 47 C.F.R. § 79.108(d). Specifically, when providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices. *Id.* § 79.108(d)(1). In addition, MVPDs must provide notice on their official websites about the availability of accessible navigation devices. *Id.* § 79.108(d)(2).

⁵³ See 47 U.S.C. §§ 303(aa)(1), 303(bb)(1); 47 C.F.R. §§ 79.107(c), 79.108(c); *Report and Order and Further Notice*, 28 FCC Rcd at 17379, ¶ 77 (citing 47 U.S.C. § 617(g)).

⁵⁴ 47 U.S.C. § 303(aa)(1).

⁵⁵ *Id.* § 303(bb)(1).

⁵⁶ See *Report and Order and Further Notice*, 28 FCC Rcd at 17379-80, ¶¶ 77-78.

offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.⁵⁷

14. *Compliance Deadlines.* We continue to require the same compliance deadlines for the usability and information, documentation, and training requirements that the Commission adopted in the *Report and Order* for rules to ensure the accessibility of user interfaces and video programming guides and menus under Sections 204 and 205.⁵⁸ We decline to provide additional time for entities to come into compliance with the usability requirements for Section 204 devices and the information, documentation, and training requirements for Section 204 and 205 devices adopted herein.⁵⁹ With the exception of ACA, no commenter requested additional time to come into compliance with these requirements. ACA requests that small- and medium-sized cable operators receive an extended deadline to come into compliance with any information, documentation, and training requirements imposed on Section 205 entities.⁶⁰ ACA contends that such operators “would likely lack the legal, technical, or financial ability to incorporate the [information, documentation, and training] requirements,” and, therefore, the Commission should provide them with an extended compliance deadline to alleviate these burdens.⁶¹ While we agree that providing some relief to small- and mid-sized operators is reasonable, we note that the Commission in the *Report and Order* already delayed the time by which mid-sized and smaller MVPD operators and small MVPD systems must comply with the requirements of Section 205 by two years.⁶² We believe that the delay already afforded to certain mid-sized and smaller MVPD operators and small MVPD systems will provide sufficient time in which to implement the information, documentation, and training requirements adopted herein.

B. Notifications

1. Equipment Manufacturer Notifications under Sections 204 and 205

15. We adopt the *Further Notice*'s tentative conclusion to require manufacturers of navigation devices subject to Section 205 to inform consumers about the availability of audibly accessible devices and accessibility solutions.⁶³ Specifically, consistent with our proposal in the *Further Notice*, we require manufacturers subject to Section 205 to prominently display information about audibly accessible devices and other accessibility solutions on their official websites.⁶⁴ We also adopt a similar notification requirement for manufacturers of digital apparatus that are subject to Section 204. However, we decline

⁵⁷ *Id.* at 17379, ¶ 77; 47 C.F.R. §§ 79.107(c)(2)(i)-(iv), 79.108(c)(2)(i)-(iv).

⁵⁸ Covered entities must comply with these rules by December 20, 2016, subject to certain exceptions. *See* 47 C.F.R. §§ 79.107(b), 79.108(b), 79.109(c). *See also Report and Order and Further Notice*, 28 FCC Rcd at 17399-405, ¶¶ 111-19.

⁵⁹ *See* 47 C.F.R. §§ 79.107(b), 79.108(b).

⁶⁰ *See* ACA Reply at 3-5.

⁶¹ *Id.* at 4-5.

⁶² *See* 47 C.F.R. § 79.108(b); *Report and Order and Further Notice*, 28 FCC Rcd at 17401-05, ¶¶ 114-19. Specifically, (1) MVPD operators with 400,000 or fewer subscribers as of year-end 2012; and (2) MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012, were afforded with a two-year delay of the compliance deadline. *Id.* These MVPDs must be in compliance with the rules by December 20, 2018. The Commission also committed to undertake a review of the marketplace after the December 20, 2016 compliance deadline for larger MVPDs to consider whether the delayed compliance deadline should be retained or extended (in whole or in part). *Report and Order and Further Notice*, 28 FCC Rcd at 17401, ¶ 114.

⁶³ *See Report and Order and Further Notice*, 28 FCC Rcd at 17419, ¶ 150. We note that the deadlines adopted in the *Report and Order* apply to the notification requirements adopted herein. *See* 47 C.F.R. §§ 79.107(b), 79.108(b). No commenter requested additional time to come into compliance with these requirements.

⁶⁴ *Report and Order and Further Notice*, 28 FCC Rcd at 17419, ¶ 150.

to adopt labeling requirements or other point of sale notifications for either Section 205 navigation devices or Section 204 digital apparatus.

16. Pursuant to Section 205(b)(1) of the CVAA, we require equipment manufacturers subject to Section 205 to inform consumers about the availability of audibly accessible devices and accessibility solutions by prominently displaying accessibility information on their official websites, such as through a link on their home page.⁶⁵ Our rules currently require MVPDs to notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request, and, as part of these requirements, MVPDs must provide notice on their official websites about the availability of accessible navigation devices.⁶⁶ In the *Further Notice*, we inquired whether to impose similar requirements on manufacturers of navigation devices.⁶⁷ Among the few commenters who addressed website notifications for manufacturers subject to Section 205, there appears to be general agreement that, at a minimum, equipment manufacturers should be required to prominently provide information about the availability of accessible devices on their websites.⁶⁸ Further, we adopt our proposal in the *Further Notice* to require manufacturers to convey through the website notice the means of making requests for accessible equipment and the specific person, office, or entity to which such requests are to be made.⁶⁹ Because Section 205 allows covered entities to distribute accessible navigation devices “upon request” to blind and visually impaired individuals,⁷⁰ we find that, similar to the requirement for MVPDs,⁷¹ the website notice provided by navigation device manufacturers must provide information on how individuals who are blind or visually impaired can request accessible equipment, as well as the specific person, office, or entity to which such requests are to be made. Although the website is required to contain information only about the availability of accessible devices and the means for making requests for such equipment, the contact office or person listed on the website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.⁷² In addition, as is required for MVPD website notices, the information required herein by navigation device manufacturers must be provided in a website format that is accessible to individuals with disabilities.⁷³

⁶⁵ *See id.*

⁶⁶ 47 C.F.R. §§ 79.108(d)(1)-(2).

⁶⁷ *See Report and Order and Further Notice*, 28 FCC Rcd at 17419, ¶ 150.

⁶⁸ *See* CEA Comments at 9-10; CEA Reply at 6-7; Consumer/Academic Groups Comments at 12; Reply Comments of Montgomery County, Maryland at 35 (“Montgomery County Reply”) (arguing that website notifications may be a component of increasing consumer awareness of accessible devices, but should not be considered an “all-encompassing solution”).

⁶⁹ *See Report and Order and Further Notice*, 28 FCC Rcd at 17419, ¶ 150.

⁷⁰ 47 U.S.C. § 303(bb)(1).

⁷¹ *See* 47 C.F.R. § 79.108(d)(2); *Report and Order and Further Notice*, 28 FCC Rcd at 17412, ¶ 134.

⁷² *See* Consumer/Academic Groups Comments at 13 (“Too often have deaf and hard of hearing customers reached out to customer service representatives asking how to access the closed captioning features on products and encountered puzzled customer service representatives.”); Consumer/Academic Groups Reply at 5 (“[C]onsumers have told us that the sales people in stores as well as customer support people over the phone often are unfamiliar with the closed captioning features on their products.”); Wireless RERC Reply at 4-5 (“[C]ustomer service is central to providing information to people who have vision loss, as oftentimes the online and print information is not consistently accessible. . . . The common theme was that customer support agents simply did not have the required expertise to address specific inquiries made by people with disabilities, hence support was inadequate.”).

⁷³ *See* 47 C.F.R. § 79.108(d)(2).

17. Device manufacturers that produce Section 204 digital apparatus will also be required to provide prominent notification about the availability of accessible devices on their official websites as is required for Section 205 navigation devices. In the *Further Notice*, we sought comment on whether to impose notification requirements on equipment manufacturers subject to Section 204 to ensure that consumers with disabilities are informed about which products contain the required accessibility features and, more specifically, whether we should require manufacturers to prominently display information about the availability of accessible devices and about which products contain the required accessibility features on their official websites, such as through a link on their home pages, and whether we should require a point of contact who can answer consumer questions about which products contain the required accessibility features.⁷⁴ Consumer/Academic Groups support adopting a website notification requirement for both digital apparatus and navigation devices, recognizing that “access is not possible if those who need the access are not aware of its availability.”⁷⁵ We agree and therefore adopt a website notification requirement for equipment manufacturers subject to Section 204. Just as we require for Section 205 manufacturers,⁷⁶ the contact office or person listed on the website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.

18. We disagree with CEA’s contention that adopting the definition of “usable” for Section 204 devices obviates the need for any additional notification requirements for digital apparatus.⁷⁷ Rather, we find that a website notification requirement will be minimally burdensome and may enhance manufacturers’ efforts to comply with the usability requirement. Specifically, although not required, digital apparatus manufacturers may choose to use the notification portion of their website to include additional information about accessibility features.

19. We decline to impose labeling requirements or other point of sale notifications for navigation devices or digital apparatus at this time, but we emphasize that entities covered by Sections 204 and 205 of the CVAA are required to provide information about the accessibility features of devices, including information about how to access closed captioning controls and settings, as part of the information, documentation, and training requirements that we adopt herein. The *Further Notice* sought comment regarding what notification, if any, should be required at the point of sale for consumers that wish to purchase accessible Section 205 or Section 204 devices at retail, such as a labeling requirement to identify accessible devices.⁷⁸ Comments regarding point of sale notifications focused almost exclusively on whether the Commission should adopt a product labeling requirement. Consumer/Academic Groups support a labeling requirement for both navigation devices and digital apparatus that would inform consumers at the point of sale about product accessibility, including a notice on the packaging that “explain[s] how to access the closed captioning control as well as display settings.”⁷⁹ Consumer/Academic Groups also contend that manufacturers should be required to provide “step-by-step

⁷⁴ *Report and Order and Further Notice*, 28 FCC Rcd at 17420, ¶ 152.

⁷⁵ Consumer/Academic Groups Comments at 11.

⁷⁶ *See supra* ¶ 16.

⁷⁷ CEA Comments at 10 (“In fact, there is no need to impose notification requirements on manufacturers of digital apparatus if the Commission adopts the definition of ‘usable.’ . . . Doing so would ensure that information is available to consumers regarding the accessibility features of digital apparatus, without the need for additional notification requirements.”); CEA Reply at 7 (“Because Section 204 applies to all of these devices, relying on the existing definition of ‘usable’ in the Section 204 context will ensure that information is available to consumers regarding the accessibility features of digital apparatus, without the need for specific, and burdensome, labeling or other notification requirements.”).

⁷⁸ *Report and Order and Further Notice*, 28 FCC Rcd at 17419-20, ¶¶ 151-52.

⁷⁹ Consumer/Academic Groups Comments at 13.

instructions with pictures explaining how to access the closed captioning features” either inside the packaging or on the packaging.⁸⁰ CEA, the Entertainment Software Association (“ESA”), and the Telecommunications Industry Association (“TIA”) strongly oppose any labeling requirement for digital apparatus or navigation devices.⁸¹ For example, CEA argues that manufacturers should be able to work with retailers, without regulation, to determine how point of sale notifications should work and that manufacturers already have incentives to provide all necessary information to ensure that consumers know how to operate their devices.⁸²

20. We agree with Consumer/Academic Groups that it is important that consumers with disabilities be provided with information about the accessibility features of digital apparatus and navigation devices. The Section 6.3(l) usability and Section 6.11 information and documentation requirements adopted by the Commission here require covered entities to provide consumers with such information. Pursuant to the usability requirements we adopt here, manufacturers subject to Section 204 of the CVAA must provide access to information and documentation on the full functionalities of digital apparatus, “including instructions, product information (*including accessible feature information*), documentation, bills and technical support.”⁸³ Further, as part of the information and documentation requirements we adopt here, entities subject to both Section 204 and Section 205 of the CVAA must provide access to information and documentation, including installation guides and product support communications, and, in particular, must provide “*a description of the accessibility and compatibility features of the product* upon request, including, as needed, in alternate formats or alternate modes at no additional charge.”⁸⁴ Thus, covered entities will be required to provide the information about product accessibility features, including information on how to access closed captioning features and display settings, and such information must be provided in accessible formats, but it will not need to be included on a label.⁸⁵ As industry gains experience with the informational requirements, we may revisit our rules in the future to ensure that consumers are receiving information as intended by the statute.

21. Consumer/Academic Groups support requiring manufacturers to provide not just website notifications about the availability of accessible devices and the contact information for requesting accessible devices, but also website information “explaining the accessibility of their devices and how to access important accessibility features such as the closed captioning control and display settings.”⁸⁶ As

⁸⁰ *Id.*

⁸¹ See CEA Comments at 10-11; CEA Reply at 7-8; Reply Comments of the Entertainment Software Association at 5 (“ESA Reply”); Reply Comments of the Telecommunications Industry Association at 2-3 (“TIA Reply”).

⁸² See CEA Comments at 10-11; CEA Reply at 7-8. In addition, ESA and TIA argue that Consumer/Academic Groups’ proposal to include explanations and instructions on the packaging would be difficult to implement and that, in any event, packaging labels are not accessible to those who are blind or visually impaired. ESA Reply at 5; TIA Reply at 2-3. See also CEA Reply at 8. TIA submits that the most logical place for instructions is not a packaging label but the product’s manual or help guide. TIA Reply at 3.

⁸³ 47 C.F.R. § 6.3(l) (emphasis added). We interpret this requirement to mean that, if a manufacturer generally provides instructions or a user manual with its product, such instructions or user manual shall include information and instructions on how to use accessibility features. We also interpret this requirement to mean that, even if a manufacturer does not routinely provide instructions or a user manual with its product, it still must provide product information and instructions on how to use accessibility features in an accessible format upon request to consumers with disabilities.

⁸⁴ *Id.* §§ 6.11(a)(1)-(2) (emphasis added). As noted above, if a consumer with a disability requests an accessible navigation device pursuant to Section 205, this also constitutes a request for a description of the accessibility features of the device and end-user product documentation in accessible formats. See *supra* ¶ 11.

⁸⁵ See Appendix B (newly added 47 C.F.R. §§ 79.107(d)(1), 79.108(f)(1)). Such formats include picture instructions for individuals who are deaf and hard of hearing and Braille/audible instructions for individuals who are blind or visually impaired.

⁸⁶ Consumer/Academic Groups Comments at 12.

noted above, while the information and documentation requirements that we adopt broadly outline the steps covered entities must take to ensure that persons with disabilities have access to information about accessibility features, covered entities have flexibility to implement these requirements within the guidelines set forth in the rule. Thus, we do not require that such information be posted on websites. However, we agree that providing this information on websites would be useful for consumers to be able to effectively use a device's accessibility features and therefore encourage covered entities to provide the required information and documentation about accessibility features on their websites in a format that is accessible to individuals with disabilities. With respect to both Section 204 and 205 devices, as we state above, we require persons listed as the point of contact for requests for accessible equipment to also be able to provide information about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.⁸⁷

22. In addition, Consumer/Academic Groups request a central website, similar to the Commission's Accessibility Clearinghouse,⁸⁸ which would include accessibility information for all digital apparatus and navigation devices.⁸⁹ The Accessibility Clearinghouse was set up for equipment subject to Sections 255, 716, and 718 of the Act, namely telecommunications equipment, advanced communications services equipment, and Internet browsers on mobile phones, pursuant to a Congressional mandate within the CVAA,⁹⁰ and we note that Congress did not mandate a similar website for equipment subject to Sections 204 and 205. Nevertheless, we find that consumers would benefit from this information being included within the framework of the already established Accessibility Clearinghouse. To date, the Accessibility Clearinghouse largely relies on manufacturers to update their product information on wireless communication technologies.⁹¹ A similar commitment by CEA, NCTA, and their memberships that could enable the inclusion and updating of information about accessible digital apparatus and navigation devices within the Accessibility Clearinghouse would be useful to consumers. Therefore, we encourage CEA and NCTA to coordinate with the Consumer and Governmental Affairs Bureau ("CGB") to determine the feasibility of including information about the accessibility of digital apparatus and navigation devices within the current Accessibility Clearinghouse. We recommend that such coordination take place with CGB well before the December 20, 2016 compliance deadline for our digital apparatus and navigation device accessibility requirements.

⁸⁷ See *supra* ¶¶ 16-17.

⁸⁸ Established pursuant to Section 717(d) of the Act, the Accessibility Clearinghouse is "a clearinghouse of information on the availability of accessible products and services and accessibility solutions required under sections 255, 617, and 619." 47 U.S.C. § 618(d). The information is made publicly available on the Commission's website and includes an annually updated list of products and services with accessibility features. *Id.* The Accessibility Clearinghouse can be accessed at <http://ach.fcc.gov/>.

⁸⁹ See Consumer/Academic Groups Comments at 12.

⁹⁰ See Pub. L. No. 111-260, § 104.

⁹¹ See *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, DA 12-1602, 27 FCC Rcd 12204, 12240, ¶ 91, n. 258 (CGB 2012) ("In 2010, CTIA revamped its accessibility web site, AccessWireless.org, to better inform consumers with disabilities about the availability of accessible mobile phone options. . . . The Commission ultimately used the information contained on this new site, largely derived from the Global Accessibility Reporting Initiative (GARI) of the Mobile Manufacturers Forum, to help develop its Accessibility Clearinghouse. For more information about GARI and the Mobile Manufacturers Forum, visit <http://MobileAccessibility.info/>").

2. MVPD Notifications under Section 205

23. Just as we require for manufacturers of Section 204 and 205 devices,⁹² we require MVPDs to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. This new requirement is in addition to the two existing notification requirements for MVPDs that the Commission adopted in the *Report and Order*. First, MVPDs are required to “clearly and conspicuously inform consumers about the availability of accessible navigation devices” whenever MVPDs provide “information about equipment options in response to a consumer inquiry about service, accessibility, or other issues.”⁹³ Second, “MVPDs must provide notice on their official websites about the availability of accessible navigation devices,” in a way that is both prominent and accessible to those with disabilities.⁹⁴ In particular, the website notice must prominently display information about accessible navigation devices “in a way that makes such information available to all current and potential subscribers,” and must list the specific person, office, or entity to which requests for accessible equipment are to be made.⁹⁵ The *Further Notice* inquired as to whether additional notification requirements, such as annual notices to subscribers or required marketing efforts,⁹⁶ should be imposed and asked for information about the costs and benefits that might be associated with additional types of notification.⁹⁷

24. MVPD commenters argue that it would be premature to impose additional notification requirements for MVPDs without first observing the efficacy of the notification requirements adopted by the *Report and Order*.⁹⁸ On the other hand, Montgomery County, Maryland (“Montgomery County”) expresses the concern that consumers will not be aware of the availability of accessible navigation devices unless MVPDs promote such availability and urges the Commission to adopt additional notification requirements including periodic announcements about accessible equipment in the program guide.⁹⁹ Verizon and NCTA contend that additional requirements are unnecessary because market forces will incentivize MVPDs to promote the accessible capabilities of products.¹⁰⁰ Although we do not agree

⁹² See *supra* ¶¶ 16-17.

⁹³ *Report and Order and Further Notice*, 28 FCC Rcd at 17412, ¶ 134; 47 C.F.R. § 79.108(d)(1).

⁹⁴ *Report and Order and Further Notice*, 28 FCC Rcd at 17412, ¶ 134; 47 C.F.R. § 79.108(d)(2).

⁹⁵ *Id.*

⁹⁶ See Comments of Montgomery County, Maryland, MB Docket No. 12-108, at 20 (filed July 15, 2013); Reply Comments of the American Foundation for the Blind, MB Docket No. 12-108, at 8 (filed Aug. 7, 2013); *Report and Order and Further Notice*, 28 FCC Rcd at 17419, ¶ 148.

⁹⁷ *Report and Order and Further Notice*, 28 FCC Rcd at 17419, ¶¶ 148-49.

⁹⁸ See Verizon Comments at 4-6; ACA Reply at 6; Reply Comments of CenturyLink at 3 (“CenturyLink Reply”); NCTA Reply at 8-9.

⁹⁹ Montgomery County Reply at 34-35. Montgomery County expresses concern that website notifications by MVPDs will not be sufficient as they claim that the disability community has a low rate of broadband adoption and usage and website information may not be accessible. *Id.* at 35. We note that our notification rules for MVPDs are not limited to website notifications. MVPDs must provide clear and conspicuous information to consumers about the availability of accessible navigation devices whenever MVPDs provide “information about equipment options in response to a consumer inquiry about service, accessibility, or other issues.” 47 C.F.R. § 79.108(d)(1). MVPDs are also required to ensure that the information on their website about the availability of accessible devices is “provided in a Web site format that is accessible to people with disabilities.” *Id.* § 79.108(d)(2).

¹⁰⁰ See Verizon Comments at 5; NCTA Reply at 9. We note that Comcast is conducting outreach on accessible user interfaces, program guides, and menus, and as part of those outreach efforts, Comcast has shown a commercial introducing its talking guide that aired on television during prime time. See Comcast, Explore Emily’s Oz, *available*

(continued....)

that periodic announcements are necessary at this time, we conclude that MVPDs should take additional action to ensure that consumers are aware of the availability of accessible navigation devices. Specifically, we require that the contact office or person listed on an MVPD's website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. We believe that this additional obligation, along with the notification requirements adopted in the *Report and Order*, will ensure that all current and potential subscribers that contact an MVPD looking for information about accessible navigation devices will be provided with information about accessible equipment options.¹⁰¹ Moreover, we believe that the incremental cost, if any, of implementing this requirement is slight and the potential benefit in assisting consumers is great.¹⁰² In the event that information is brought to our attention demonstrating that the MVPD notification requirements adopted in the *Report and Order* and herein have proven insufficient to inform consumers about the availability of accessible equipment, the Commission may revisit this issue.¹⁰³

C. Program Information for PEG Channels

25. We decline to adopt a requirement that MVPDs include more detailed program information for public, educational, and governmental ("PEG") channels in their video programming guides. In the *Further Notice*, we sought comment on possible sources of authority for requiring MVPDs to ensure that video programming guides and menus that provide channel and program information include "high level channel and program descriptions and titles, as well as a symbol identifying the programs with accessibility options (captioning and video description)."¹⁰⁴ The Alliance for Communications Democracy ("ACD") and Montgomery County contend that the Commission has authority to adopt such a requirement pursuant to Section 205 of the CVAA, which requires that "on-screen text menus and guides provided by navigation devices . . . for the display or selection of multichannel video programming [be made] audibly accessible in real-time upon request by individuals who are blind or visually impaired."¹⁰⁵ According to ACD, the Commission can require MVPDs to include certain program information in program guides as part of implementing regulations that construe the terms "on-screen guide" and "audibly accessible in real-time . . . by individuals who are blind or visually impaired."¹⁰⁶ NCTA, DISH/EchoStar, Verizon, CenturyLink, and ACA argue that the Commission does not have authority to impose such a requirement.¹⁰⁷

(Continued from previous page) _____
at <http://www.comcast.com/emilysoz>; Comcast, Accessibility, Talking Guide + Video Description, available at <http://www.comcast.com/accessibility>.

¹⁰¹ See *Report and Order and Further Notice*, 28 FCC Rcd at 17412, ¶ 134; 47 C.F.R. § 79.108(d)(2).

¹⁰² Because the contact person designated by the MVPD is already required to accept requests for accessible equipment, we do not believe it would be a significant added burden for the contact person to also be able to answer questions about the availability of accessible equipment. In addition, it would be a benefit for consumers with disabilities who are looking to acquire accessible equipment to be able to obtain information about accessible equipment options from a single, centralized source.

¹⁰³ For the same reasons, we reject Montgomery County's proposal to require that MVPDs report to the Commission their accessibility equipment promotion efforts and the rates for accessible equipment. See Montgomery County Reply at 35.

¹⁰⁴ *Report and Order and Further Notice*, 28 FCC Rcd at 17417, ¶ 144 (citation omitted).

¹⁰⁵ See 47 U.S.C. § 303(bb)(1); Comments of the Alliance for Communications Democracy at 4-5 ("ACD Comments"); Montgomery County Reply at 13-22.

¹⁰⁶ See ACD Comments at 4-5.

¹⁰⁷ See NCTA Comments at 2-4; DISH/EchoStar Comments at 7-8; Verizon Comments at 8-10; ACA Reply at 8-9; CenturyLink Reply at 3; NCTA Reply at 2-4.

26. We find that requiring MVPDs to include particular information in program guides is beyond the scope of Section 205 of the CVAA. In particular, we disagree with ACD's and Montgomery County's argument that the requirement to make on-screen text menus and guides on navigation devices audibly accessible gives the Commission authority to determine whether the substantive information provided in program guides is adequate and to require that particular information be included. As we stated in the *Report and Order*, while Section 205 of the CVAA requires that on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming be made audibly accessible, it does not govern the underlying content in the menus and guides.¹⁰⁸ As noted in the *Report and Order*, we encourage MVPDs to provide more detailed information in their program guides for PEG programs when such information is provided by PEG providers and when it is technically feasible.¹⁰⁹

IV. ORDER ON RECONSIDERATION

27. In response to Consumer/Academic Groups Petition,¹¹⁰ we reconsider guidance we provided in the *Report and Order* concerning which activation mechanisms are “reasonably comparable to a button, key or icon”¹¹¹ as required under the CVAA¹¹² and our implementing rules.¹¹³ First, we find

¹⁰⁸ *Report and Order and Further Notice*, 28 FCC Rcd at 17377, ¶ 75 (“In other words, this section requires that *if* there is text in a menu or program guide on the screen, then *that text* must be audibly accessible, but it does not impose requirements with regard to what substantive information must appear in the on-screen text.”) (emphasis in original).

¹⁰⁹ *Id.* at 17378, ¶ 75. We note that there is a separate, pending proceeding with a record that specifically addresses these issues. See Petition for Declaratory Ruling of The Alliance for Community Media, et al., that AT&T's Method of Delivering Public, Educational and Government Access Channels Over Its U-Verse System is Contrary to the Communications Act of 1934, as Amended, and Applicable Commission Rules, MB Docket No. 09-13.

¹¹⁰ The Consumer/Academic Groups Petition urges the Commission to “reconsider allowing voice commands and gestures as compliant mechanisms for activating the closed captioning or accessibility features.” Consumer/Academic Groups Petition at 2. Consumer/Academic Groups argue that “providing voice or gesture controls is acceptable only where there is also a way for people who are deaf or hard of hearing to access the accessibility features through a mechanism that is reasonably comparable to a button, key, or icon.” Reply to Petition for Reconsideration Oppositions of the National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, Technology Access Program Gallaudet University, filed Feb. 25, 2014, at 3 (“Consumer/Academic Groups Reply to Oppositions”). CEA, ESA, NCTA, and TIA all filed oppositions to the Consumer/Academic Groups Petition, arguing that the Commission correctly decided that voice and gesture controls are compliant mechanisms reasonably comparable to a button, key, or icon for activating closed captioning and video description. See Opposition of the Consumer Electronics Association, filed Feb. 18, 2014 (“CEA Opposition”); Opposition of the Entertainment Software Association, filed Feb. 18, 2014 (“ESA Opposition”); Opposition of the National Cable & Telecommunications Association, filed Feb. 18, 2014 (“NCTA Opposition”); Opposition of the Telecommunications Industry Association, filed Feb. 14, 2014 (“TIA Opposition”).

¹¹¹ *Report and Order and Further Notice*, 28 FCC Rcd at 17381, ¶ 81 (“Although we codify the statutory language that requires a mechanism reasonably comparable to a button, key, or icon to activate certain accessibility features and reject a single step requirement, we believe it is useful to provide guidance to covered entities as to what ‘reasonably comparable to a button, key, or icon’ means.”); *id.* at 17382, ¶ 81 (“To provide some clarity to covered entities, we provide some examples of mechanisms that we consider to be . . . reasonably comparable to a button, key, or icon. For example, we believe that compliant mechanisms include, but are not limited to, the following: a dedicated button, key, or icon; voice commands; gestures; and a single step activation from the same location as the volume controls.”).

¹¹² Section 303(aa)(3) of the Act requires digital apparatus covered by Section 204 of the CVAA to provide “built in access to [] closed captioning and video description features *through a mechanism that is reasonably comparable to a button, key, or icon* designated for activating the closed captioning or accessibility features.” 47 U.S.C. § 303(aa)(3) (emphasis added). Similarly, Section 303(bb)(2) requires “navigation devices with built-in closed

(continued....)

on reconsideration that closed captioning activation mechanisms that rely *solely* on voice control will not fulfill the requirement that a closed captioning activation mechanism be reasonably comparable to a button, key, or icon. However, as explained more fully below, we do not prohibit the use of voice controls to activate closed captioning as long as there is an alternative closed captioning activation mechanism that is simple and easy to use for deaf and hard of hearing individuals.¹¹⁴ Second, we reaffirm our finding in the *Report and Order* that captioning and video description activation mechanisms that rely on gesture control will be considered compliant with the requirements of our rules implementing Sections 204 and 205 if the gesture activation mechanism is simple and easy to use.

A. Activation of Closed Captioning by Voice Control

28. On reconsideration, we find that closed captioning activation mechanisms that rely *solely* on voice control will not fulfill the requirement of our rules implementing Sections 204 and 205, which mandate a closed captioning activation mechanism reasonably comparable to a button, key, or icon.¹¹⁵ The *Report and Order* stated that, “[i]n determining whether an activation mechanism is reasonably comparable to a button, key, or icon, the Commission will consider the simplicity and ease of use of the mechanism.”¹¹⁶ As the Commission explained, “[w]e believe this approach is consistent with Congress’s intent ‘to ensure ready access to these features by persons with disabilities,’ while still giving covered entities the flexibility contemplated by the statute.”¹¹⁷ Among the examples given by the Commission for compliant activation mechanisms were both voice and gesture activation.¹¹⁸ Specifically, the Commission stated “that compliant mechanisms include, but are not limited to, the following: a dedicated button, key, or icon; voice commands; gestures; and a single step activation from the same location as the volume controls.”¹¹⁹

29. The Consumer/Academic Groups Petition submits that “many” deaf and hard of hearing people, especially those who communicate using American Sign Language, “do not speak or speak clearly enough to use speech recognition technology.”¹²⁰ As a result, Consumer/Academic Groups contend that the use of voice controls to activate closed captioning “will effectively deny millions of deaf and hard of hearing people access to closed captioning and/or other accessibility features.”¹²¹ Upon further review, we agree that voice activation would not be simple and easy to use for many individuals who are deaf and hard of hearing and, thus, should not be considered reasonably comparable to a button, key, or icon for activating closed captioning. Therefore, the use of voice activation for closed captioning, without an alternative closed captioning activation mechanism that is simple and easy to use for

(Continued from previous page) _____
captioning capability” covered by Section 205 of the CVAA to provide “access to that capability *through a mechanism [that] is reasonably comparable to a button, key, or icon* designated for activating the closed captioning, or accessibility features.” 47 U.S.C. § 303(bb)(2) (emphasis added).

¹¹³ See 47 C.F.R. §§ 79.109(a)(1)-(2), 79.109(b).

¹¹⁴ *Report and Order and Further Notice*, 28 FCC Rcd at 17381, ¶ 81 (“In determining whether an activation mechanism is reasonably comparable to a button, key, or icon, the Commission will consider the simplicity and ease of use of the mechanism.”).

¹¹⁵ See 47 C.F.R. §§ 79.109(a)(1), 79.109(b).

¹¹⁶ *Report and Order and Further Notice*, 28 FCC Rcd at 17381, ¶ 81.

¹¹⁷ *Id.* at 17381-82, ¶ 81, citing H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 31 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess. at 14 (2010).

¹¹⁸ *Report and Order and Further Notice*, 28 FCC Rcd at 17382, ¶ 81.

¹¹⁹ *Id.*

¹²⁰ Consumer/Academic Groups Petition at 3.

¹²¹ *Id.* at 4.

individuals who are deaf and hard of hearing, does not satisfy the obligation under Sections 79.109(a)(1) and 79.109(b) of our rules and Sections 204 and 205 of the CVAA to provide a mechanism reasonably comparable to a button, key, or icon.¹²²

30. While some opposing the Consumer/Academic Groups Petition express concern about the Commission prohibiting the use of voice controls to achieve accessibility,¹²³ we emphasize that this Order does not prohibit use of voice controls to activate closed captioning as long as there is an alternative closed captioning activation mechanism that is simple and easy to use for the many deaf and hard of hearing individuals who cannot use their voices to activate this accessibility feature. NCTA and TIA both submit that voice control is likely to be only one method for activating accessibility features,¹²⁴ and it is not our intent to prevent manufacturers from offering multiple avenues of accessibility. Rather, we find that *solely* providing a voice activation mechanism for closed captioning would not fulfill the MVPD's or manufacturer's obligation to provide an activation mechanism "reasonably comparable to a button, key, or icon" under our rules and Sections 204 and 205 of the CVAA.¹²⁵

B. Activation of Closed Captioning and Video Description by Gesture Control

31. With respect to gesture control, we decline to reconsider our finding that gesture control that is simple and easy to use will be considered a compliant activation mechanism for closed captioning and video description under Sections 204 and 205.¹²⁶ The Consumer/Academic Groups Petition argues that gesture control should not be considered a compliant closed captioning activation mechanism, because some deaf people may have mobility disabilities that prevent them from using gestures.¹²⁷ Consumer/Academic Groups also note that they "are seriously concerned about the ability of blind and visually impaired people to access critical accessibility features through gestures."¹²⁸ In response, CEA

¹²² See Consumer/Academic Groups Reply to Oppositions at 3.

¹²³ See CEA Opposition at 4; NCTA Opposition at 7; TIA Opposition at 2-3, 5.

¹²⁴ See NCTA Opposition at 7; TIA Opposition at 5.

¹²⁵ CEA and ESA point out the potential benefits of voice activation for those who are blind or visually impaired. See CEA Opposition at 4; ESA Opposition at 2. We note that the Order does not prohibit the use of simple and easy to use voice controls as the sole mechanism of activating video description.

¹²⁶ Contrary to Petitioners' argument, see Consumer/Academic Groups Petition at 4-5, the parties were on notice that we would consider in this proceeding whether gesture controls satisfy the requirement for activation mechanisms that are "reasonably comparable to a button, key, or icon." The NPRM asked for comment on whether we should require single step activation, and provided examples of gesture activation that we would consider, such as "pressing" or "clicking" a button, key, or icon. See NPRM, 28 FCC Rcd at 8524, ¶ 43 (seeking comment about single step activation, that is "users would be able to activate closed captioning features on an MVPD-provided navigation device or other digital apparatus immediately in a single step just as a button, key, or icon can be pressed or clicked in a single step"). Indeed, four commenters addressed gesture activation in their comments submitted in response to the NPRM. See Comments of the Consumer Electronics Association at 20 ("Even more significantly, some devices do not include any buttons but instead rely on voice or gesture recognition to activate and deactivate certain features, which for some users may be better accessibility solutions than a designated physical button."); Comments of DIRECTV, LLC at 9 ("Thus, a user could access this [closed captioning] functionality by simultaneously pressing two specified keys on the remote control. Alternatively, the user could shake a hand-held device or swipe her fingers across a touchscreen device, interact with a device that responds to voice commands, or even interact with a device that detects motion patterns."); Comments of the Information Technology Industry Council at 7 ("[S]ome devices do not have buttons at all, but rather, rely either on touch interfaces, gestures or voice commands."); Comments of the National Cable & Telecommunications Association at 14-15 ("[O]perators may eventually deploy devices with gesture recognition that will revolutionize accessibility."). All comments above were filed July 15, 2013 in MB Docket No. 12-108.

¹²⁷ Consumer/Academic Groups Petition at 4.

¹²⁸ *Id.*

points out that the use of a button, key, or icon as an activation mechanism, clearly permissible under Sections 204 and 205, would be difficult for some individuals with disabilities such as “limited manual dexterity, limited reach or strength, or prosthetic devices.”¹²⁹ Sections 204 and 205 require that the activation mechanism be “reasonably comparable to a button, key, or icon,”¹³⁰ and we find that the Commission’s interpretation of the phrase “reasonably comparable to a button, key, or icon” in the *Report and Order* to mean a mechanism that is simple and easy to use was both a reasonable and supportable interpretation of the language used by Congress.¹³¹ Furthermore, we find that a gesture control that is simple and easy to use complies with the requirements under Section 204 or 205 to provide an activation mechanism reasonably comparable to a button, key, or icon.

32. Industry commenters contend that gestures are likely to be one of multiple methods for activating accessibility features,¹³² and we agree that manufacturers should have the flexibility to offer multiple avenues of accessibility. We encourage covered entities to provide alternatives for the consumer, so that the consumer can choose the disability solution that works best based upon his or her need. While manufacturers have flexibility in their selection of a mechanism that is comparable to a button, key, or icon, we strongly recommend that they consult with consumers with disabilities about the method(s) they select to activate closed captions and video description, to ensure that these achieve Congress’s goal of facilitating access to such accessibility features. For example, the Commission previously recognized that some individuals with hearing loss also have other disabilities.¹³³ This is particularly true of older Americans who may have lost, or be in the process of losing, some of their sight or hand/eye coordination. For such persons, some gesture controls may not be “simple and easy to use.” Providing multiple means to access captions and video description will undoubtedly result in reaching a larger portion of the deaf and hard of hearing and blind or visually impaired populations, a goal that the Commission previously has stated is in keeping with Congressional intent.¹³⁴

V. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

33. In this *Second Further Notice*, we seek comment on a proposal to adopt rules that would require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning and we seek comment on the Commission’s authority to adopt such rules under the Television Decoder Circuitry Act of 1990 (“TDCA”).¹³⁵ In the *Further Notice*, we inquired whether Sections 204 and 205 of the CVAA provide the Commission with authority to adopt such a requirement.¹³⁶ Upon further review of the issue, we continue to believe that there are important public

¹²⁹ CEA Opposition at 5.

¹³⁰ 47 U.S.C. §§ 303(aa)(3), 303(bb)(2).

¹³¹ *Report and Order and Further Notice*, 28 FCC Rcd at 17381-82, ¶ 81.

¹³² See NCTA Opposition at 7; TIA Opposition at 5.

¹³³ For example, the Commission has stated that captions can benefit Americans with hearing disabilities who also have a visual disability. *Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, ET Docket No. 99-254, MM Docket No. 95-176, Report and Order, 15 FCC Rcd 16788, 16792-93, ¶ 10 (2000) (“*DTV Closed Captioning Order*”).

¹³⁴ See *id.* at 16793, ¶ 13, in which the Commission, in adopting requirements for captioning display standards, stated that “[o]nly by requiring decoders to respond to these various features can we ensure that closed captioning will be accessible for the greatest number of persons who are deaf and hard of hearing, and thereby achieve Congress’ vision that to the fullest extent made possible by technology, people who are deaf or hard of hearing have equal access to the television medium.”

¹³⁵ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

¹³⁶ *Report and Order and Further Notice*, 28 FCC Rcd at 17415, ¶ 140. In response to the *FNPRM*, we received comments on the issue of our authority under Sections 204 and 205, which we are continuing to evaluate.

interest considerations in favor of ensuring that consumers are able to readily access user display settings for closed captioning, and we seek comment on whether the TDCA provides authority to adopt regulations that would facilitate such access because it mandates that the Commission take steps to ensure that closed captioning service continues to be available to consumers.¹³⁷

34. The TDCA requires generally that television receivers and other apparatus¹³⁸ contain circuitry to decode and display closed captioning¹³⁹ and directs that our “rules shall provide performance and display standards for such built-in decoder circuitry or capability designed to display closed captioned video programming.”¹⁴⁰ In 2000, the Commission adopted technical standards for the display of closed captions on digital television receivers “to ensure that closed-captioning service continues to be available to consumers” following the transition to digital service.¹⁴¹ In particular, the Commission adopted with some modifications Section 9 of EIA-708, an industry standard addressing closed captioning for digital television, which supports user options that enable caption display to be customized for a particular viewer by allowing the viewer to change the appearance of the captions to suit his or her needs.¹⁴² As we noted in the *Further Notice*,¹⁴³ when the Commission adopted the technical standards, it explained that the “capability to alter fonts, sizes, colors, backgrounds and more, can enable a greater number of persons who are deaf and hard of hearing to take advantage of closed captioning.”¹⁴⁴ Notably, the Commission concluded that “[o]nly by requiring decoders to respond to these various [display] features can we ensure that closed captioning will be accessible for the greatest number of persons who are deaf and hard of hearing, and thereby achieve Congress’ vision that to the fullest extent made possible by technology, people who are deaf or hard of hearing have equal access to the television medium.”¹⁴⁵

35. We seek comment on whether the TDCA gives the Commission authority to adopt further implementing regulations to ensure that consumers are able to readily access user display settings for closed captioning. Specifically, the TDCA, as codified in Section 330(b) of the Act, provides that “[a]s new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that closed-captioning service continues to be available to consumers.”¹⁴⁶ In enacting the TDCA, Congress stated that “to the fullest extent made possible by technology,” persons who are deaf and hard of hearing “should have equal access to the television medium.”¹⁴⁷ We believe that adopting rules requiring that consumers are able to readily access user display settings for closed captioning will “ensure that closed-captioning service continues to be available

¹³⁷ See S. Rep. 101-393, 1990 USCCAN 1438 (explaining that the TDCA “charges the [FCC] with ensuring that closed-captioning services are available to the public as new technologies are developed”).

¹³⁸ See 47 U.S.C. § 303(u)(1) (requiring that “apparatus designed to receive or play back video programming transmitted simultaneously with sound” contain circuitry to decode and display closed captioning).

¹³⁹ See *id.* § 303(u)(1)(A).

¹⁴⁰ See *id.* § 330(b).

¹⁴¹ See *id.* §§ 303(u) (as amended by Section 203 of the CVAA), 330(b); *DTV Closed Captioning Order*, 15 FCC Rcd 16788.

¹⁴² *DTV Closed Captioning Order*, 15 FCC Rcd at 16791, ¶ 7.

¹⁴³ *Report and Order and Further Notice*, 28 FCC Rcd at 17415, ¶ 141.

¹⁴⁴ *DTV Closed Captioning Order*, 15 FCC Rcd at 16792, ¶ 10. After pointing out that Congress noted that captioning will benefit “older Americans who have some loss of hearing,” *id.* at 16793, ¶ 11 (quoting TDCA, § 2(4)), the Commission found that the benefits of being able to alter closed captions extend to older Americans who may have some hearing loss along with a visual disability. *Id.*

¹⁴⁵ *Id.* at 16793, ¶ 13. See also Pub. L. No. 101-431, § 2(1).

¹⁴⁶ Pub. L. No. 101-431, § 4; 47 U.S.C. § 330(b).

¹⁴⁷ Pub. L. No. 101-431, § 2(1).

to consumers” and, in particular, that enabling viewers who are deaf and hard of hearing to set caption display features, such as colors, fonts, sizes, and backgrounds, will ensure that such individuals can benefit fully from digital television technologies.¹⁴⁸ We seek comment on this analysis.

36. Although the rules implemented in 2000 were intended to provide consumers with the benefits of customization for closed captioning, the record indicates that these features remain inaccessible to many viewers who are deaf and hard of hearing because they are difficult to locate and use. As discussed in the *Further Notice*, Consumer/Academic Groups reference the “long and frustrating history of the difficulties in accessing closed captioning features on apparatus and navigation devices,” and describe the “[m]ost infamously difficult” example, in which a cable box must first be turned off in order to access the captioning mechanisms through a special menu feature.¹⁴⁹ Consumer/Academic Groups explain that “it is critically important that the display settings are easily accessible and easily adjustable without difficulty everywhere,” including restaurants and other public places.¹⁵⁰ We believe that public interest considerations weigh in favor of adopting requirements to ensure that consumers are able to readily access user display settings for closed captioning, and we believe that such requirements will fulfill our statutory mandate under Section 330(b) of the Act to ensure that closed captioning service continues to be available to consumers and effectuate Congress’s intent that individuals who are deaf and hard of hearing have equal access to video programming to the fullest extent made possible by technology.¹⁵¹ We seek comment on this proposal, on the costs and benefits of these requirements, and on the impact of the proposed rules on small entities.

37. Further, we seek comment on how we would implement a requirement that consumers be able to readily access user display settings for closed captioning. Consumer/Academic Groups contend that access to closed captioning display features should not be lower than the first level of a menu,¹⁵² arguing that if users are unable to locate closed captioning display settings that are buried in multiple levels of a menu, “then they are unlikely to be able to alter the font, sizes, and/or backgrounds to fit their particular needs” and “captions will remain at hard-to-read levels – such as with fonts that are too small or with poor contrast, frustrating each individual’s ability to access programming in a way that best suits their needs.”¹⁵³ Should we require that inclusion of closed captioning display settings must be no lower than the first level of a menu? Would this approach provide industry with flexibility to develop other innovative ways for users to access and locate closed captioning display settings? We seek comment on alternative ways to implement this requirement.

¹⁴⁸ See *id.* § 4; 47 U.S.C. § 330(b).

¹⁴⁹ See Comments of the National Association of the Deaf *et al.*, MB Docket No. 12-108, at 8 (July 15, 2013). See also Letter from Andrew S. Phillips, Policy Counsel, NAD, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 3 (Sept. 11, 2013) (noting that “[t]o this day, many people who are deaf or hard of hearing continue to have difficulties accessing closed captioning controls on MVPD-provided products,” and that consumers must “navigate complex menu settings in order to find the closed captioning control or configuration settings”); Consumer/Academic Groups Comments at 8-9, 11.

¹⁵⁰ Consumer/Academic Groups Comments at 9. Consumer/Academic Groups emphasize that “[t]he CVAA applies to all devices that we access at home, in public establishments, schools, workplaces, and everywhere, not just those devices in our possession and familiar to us.” *Id.*

¹⁵¹ See 47 U.S.C. § 330(b); H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010). See also Pub. L. No. 101-431, § 2(1).

¹⁵² To provide an example of what it means to activate closed captioning in the “first level of a menu,” Consumer/Academic Groups in comments responding to the *NPRM* cited “the web-based YouTube video player,” explaining that “[t]o access the captioning settings on the YouTube player, the user first clicks the ‘CC’ button at the bottom of the screen, then clicks ‘Settings...,’ and then a box appears which allows users to adjust the closed captioning settings.” Comments of the National Association of the Deaf *et al.*, MB Docket No. 12-108, at 11 (July 15, 2013).

¹⁵³ Consumer/Academic Groups Comments at 9.

38. We also seek comment on steps industry already is taking or planning to take to facilitate access to user display settings for closed captioning. We note that, in response to questions regarding the state of industry readiness in complying with the requirements adopted in the *Report and Order*, CEA queried its members and reported that “TV manufacturers intend to make caption display settings accessible via mechanisms reasonably comparable to a button, key, or icon through several methods including a button on the remote or access through the first level of a menu,” and that “manufacturers are making efforts to streamline access to the ANSI/CEA-708 attributes.”¹⁵⁴ We seek input on whether there is a need to adopt regulations given current plans of industry with regard to facilitating access to user display settings for closed captioning.

39. We believe that a requirement that consumers be able to readily access user display settings for closed captioning should apply to apparatus covered by Section 303(u)(1) of the Act (*i.e.*, apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size),¹⁵⁵ as interpreted consistently with our precedent in the *IP Closed Captioning Order*.¹⁵⁶ We seek comment on this analysis. We also seek comment on whether the exceptions relating to technical feasibility and achievability in Section 303(u) of the Act should apply in this context.¹⁵⁷ In addition, we seek comment on which entities should be responsible for compliance. Should both manufacturers and MVPDs be obligated to facilitate the ability of consumers to locate and control closed captioning display settings? For example, where closed captioning display settings are accessed through the television or set-top box, would the manufacturer of such device be solely responsible for ensuring that the display settings are readily accessible? Or would MVPDs also have responsibility with respect to ensuring their customers are able to readily access closed captioning display settings?

40. Finally, if the Commission adopts rules, what time frame would be appropriate for requiring covered entities to ensure that consumers are able to readily access user display settings for closed captioning? In particular, we seek comment on Consumer/Academic Groups’ request that the compliance deadline for readily accessible closed captioning display settings be the same as the December 20, 2016 deadline for the closed captioning activation mechanism adopted pursuant to Sections 204 and 205 of the CVAA.¹⁵⁸ We ask commenters to justify any deadline they propose by explaining what must be done by that deadline to comply with the proposed requirement.

¹⁵⁴ Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 2 (Mar. 3, 2015). *See supra* ¶ 34 and n. 142.

¹⁵⁵ 47 U.S.C. § 303(u)(1).

¹⁵⁶ *See Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Report and Order, 27 FCC Rcd 787, 839-43, ¶¶ 93-96 (2012) (“*IP Closed Captioning Order*”). Under this interpretation, apparatus exempt from the requirement to be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming (*e.g.*, display-only video monitors, and apparatus primarily designed for purposes other than receiving or playing back video programming) would not be subject to the requirements proposed herein. *See id.* at 849-50, ¶¶ 106-08. *See also Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785, 8788-93, ¶¶ 5-15 (2013).

¹⁵⁷ 47 U.S.C. §§ 303(u), 303(u)(2); *IP Closed Captioning Order*, 27 FCC Rcd at 843-45, 848-49, ¶¶ 97-98, 104-05.

¹⁵⁸ *See Consumer/Academic Groups Comments* at 10-11.

VI. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

41. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹⁵⁹ the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to the *Second Report and Order* in MB Docket No. 12-108. The FRFA is set forth in Appendix C.

42. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) relating to the *Second Further Notice* in MB Docket No. 12-108. The IRFA is set forth in Appendix E.

B. Paperwork Reduction Act

43. The *Second Report and Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹⁶⁰ The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),¹⁶¹ we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

C. Congressional Review Act

45. The Commission will send a copy of the *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking* in MB Docket No. 12-108 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

D. Ex Parte Rules

46. We remind interested parties that this proceeding is treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁶² 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

¹⁵⁹ *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. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (“CWAAA”).

¹⁶⁰ The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

¹⁶¹ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). *See* 44 U.S.C. § 3506(c)(4).

¹⁶² 47 C.F.R. §§ 1.1200 *et seq.*

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.

E. Filing Requirements

47. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,¹⁶³ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference **MB Docket No. 12-108** and may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies.¹⁶⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

48. 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 Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

49. Availability of Documents. Comments and reply comments will be publically available online via ECFS.¹⁶⁵ These documents will also be available for public inspection during regular business

¹⁶³ See 47 C.F.R. §§ 1.415, 1419.

¹⁶⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

¹⁶⁵ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

F. Additional Information

50. For additional information on this proceeding, contact Maria Mullarkey, Maria.Mullarkey@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120.

VII. ORDERING CLAUSES

51. Accordingly, **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 found in Sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g), this *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking IS ADOPTED*, effective thirty (30) days after the date of publication in the *Federal Register*, except for 47 C.F.R. §§ 79.107(a)(5), 79.107(d), 79.107(e), 79.108(d)(2), and 79.108(f), which shall become effective upon announcement in the *Federal Register* of OMB approval and an effective date of the rules.

52. **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 found in Sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g), the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

53. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking* in MB Docket No. 12-108, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

54. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking* in MB Docket No. 12-108 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

55. **IT IS FURTHER ORDERED** that Consumer/Academic Groups Petition for Reconsideration, filed January 20, 2014, is **GRANTED IN PART** and **DENIED IN PART**, to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters****Petition for Reconsideration****Oppositions filed in MB Docket No. 12-108**

Consumer Electronics Association (CEA)
Entertainment Software Association (ESA)
National Cable & Telecommunications Association (NCTA)
Telecommunications Industry Association (TIA)

Reply filed in MB Docket No. 12-108

National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, Technology Access Program Gallaudet University (Consumer/Academic Groups)

Further Notice of Proposed Rulemaking**Comments filed in MB Docket No. 12-108**

Alliance for Communications Democracy (ACD)
Consumer Electronics Association (CEA)
Dish Network L.L.C. and EchoStar Technologies L.L.C.
Gallaudet University COM 390 Class
National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, Telecommunication-RERC (Consumer/Academic Groups)
National Cable & Telecommunications Association (NCTA)
Telecommunications Industry Association (TIA)
Verizon and Verizon Wireless

Reply Comments filed in MB Docket No. 12-108

Alliance for Communications Democracy (ACD)
American Cable Association (ACA)
American Foundation for the Blind and American Council of the Blind (AFB/ACB)
CenturyLink
Consumer Electronics Association (CEA)
Entertainment Software Association (ESA)
Montgomery County, Maryland
National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Cerebral Palsy and Deaf Organization, Telecommunication-RERC (Consumer/Academic Groups)

National Cable & Telecommunications Association (NCTA)

Telecommunications Industry Association (TIA)

Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC)

APPENDIX B

Final Rules

For the reasons discussed above, the Federal Communications Commission amends Title 47 of the Code of Federal Regulations, Part 79, as follows:

PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

1. The authority 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 § 79.107 by adding new paragraphs (a)(5), (d), and (e) to read as follows:

§ 79.107. User interfaces provided by digital apparatus.

(a)(1) ***

(2) ***

(3) ***

(4) ***

(5) As used in this section, the term “usable” shall mean that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities.

(b) ***

(c) ***

(d)(1) *Information, Documentation, and Training.* Manufacturers of digital apparatus shall ensure access to information and documentation it provides to its customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. Manufacturers shall take such other achievable steps as necessary including:

(i) Providing a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge;

(ii) Providing end-user product documentation in alternate formats or alternate modes upon request at no additional charge; and

(iii) Ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge.

(2) Manufacturers of digital apparatus shall include in general product information the contact method for obtaining the information required by paragraph (1) of this section.

(3) In developing, or incorporating existing training programs, manufacturers of digital apparatus shall consider the following topics:

- (i) Accessibility requirements of individuals with disabilities;
- (ii) Means of communicating with individuals with disabilities;
- (iii) Commonly used adaptive technology used with the manufacturer's products;
- (iv) Designing for accessibility; and
- (v) Solutions for accessibility and compatibility.

(e) *Notices.* Digital apparatus manufacturers must notify consumers that digital apparatus with the required accessibility features are available to consumers as follows: A digital apparatus manufacturer must provide notice on its official website about the availability of accessible digital apparatus. A digital apparatus manufacturer must prominently display information about accessible digital apparatus on its website in a way that makes such information available to all consumers. The notice must publicize the availability of accessible devices and the specific person, office or entity who can answer consumer questions about which products contain the required accessibility features. The contact office or person listed on the website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. All information required by this section must be provided in a website format that is accessible to people with disabilities.

3. Amend § 79.108 by revising paragraph (d) and adding new paragraph (f) to read as follows:

§ 79.108. Video programming guides and menus provided by navigation devices.

* * * * *

(d)(1) *MVPD notices.* Covered MVPDs must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows:

- (i) When providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues, MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices.
- (ii) MVPDs must provide notice on their official Web sites about the availability of accessible navigation devices. MVPDs must prominently display information about accessible navigation devices and separate solutions on their Web sites in a way that makes such information available to all current and potential subscribers. The notice must publicize the availability of accessible devices and separate solutions and explain the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made. The contact office or person listed on the website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. All information required by this section must be provided in a Web site format that is accessible to people with disabilities.

(2) *Manufacturer notices.* Navigation device manufacturers must notify consumers that navigation devices with the required accessibility features are available to consumers who are blind or visually impaired upon request as follows: A navigation device manufacturer must provide notice on its official website about the availability of accessible navigation devices. A navigation device manufacturer must prominently display information about accessible navigation devices and separate solutions on its website in a way that makes such information available to all consumers. The notice must publicize the availability of accessible devices and separate solutions and explain the means for making requests for accessible equipment and the specific person, office or entity to whom such requests are to be made. The contact office or person listed on the website must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. All information required by this section must be provided in a website format that is accessible to people with disabilities.

(e) ***

(f)(1) *Information, Documentation, and Training.* MVPDs and manufacturers of navigation devices shall ensure access to information and documentation it provides to its customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. MVPDs and manufacturers of navigation devices shall take such other achievable steps as necessary including:

- (i) Providing a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge;
- (ii) Providing end-user product documentation in alternate formats or alternate modes upon request at no additional charge; and
- (iii) Ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge.

(2) MVPDs and manufacturers of navigation devices shall include in general product information the contact method for obtaining the information required by paragraph (1) of this section.

(3) In developing, or incorporating existing training programs, MVPDs and manufacturers of navigation devices shall consider the following topics:

- (i) Accessibility requirements of individuals with disabilities;
- (ii) Means of communicating with individuals with disabilities;
- (iii) Commonly used adaptive technology used with the manufacturer's products;
- (iv) Designing for accessibility; and
- (v) Solutions for accessibility and compatibility.

(4) If a consumer with a disability requests an accessible navigation device pursuant to Section 205, this also constitutes a request for a description of the accessibility features of the device and end-user product documentation in accessible formats.

APPENDIX C

Final Regulatory Flexibility Act Analysis for the *Second Report and Order*

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in this proceeding.² The Federal Communications Commission (“Commission”) sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (“*FRFA*”) conforms to the RFA.³

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

2. Pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010 (“*CVAA*”),⁴ the *Second Report and Order* adopts additional rules requiring the accessibility of user interfaces on digital apparatus and navigation devices used to view video programming for individuals with disabilities. The rules we adopt here will effectuate Congress’s goals in enacting Sections 204 and 205 of the *CVAA* by enabling individuals who are blind or visually impaired to more easily access video programming on a range of video devices, and enabling consumers who are deaf and hard of hearing to more easily activate closed captioning on video devices. Specifically, and as discussed more thoroughly in Section D *infra*, the *Second Report and Order* adopts rules requiring manufacturers of Section 204 digital apparatus to ensure that both the “appropriate built-in apparatus functions” and the “on-screen text menus or other visual indicators built in to the digital apparatus” to access such functions be “usable by individuals who are blind or visually impaired.” In addition, the *Second Report and Order* adopts information, documentation, and training requirements comparable to those in Section 6.11 of our rules for entities covered by both Section 204 and Section 205 of the *CVAA*. Further, the *Second Report and Order* adopts consumer notification requirements for equipment manufacturers of digital apparatus and navigation devices that will require manufacturers to publicize the availability of accessible devices on manufacturer websites that must be accessible to those with disabilities. While multichannel video programming distributors (“*MVPDs*”) are already subject to website notification requirements pursuant to the rules the Commission adopted in the *Report and Order*, the *Second Report and Order* also requires *MVPDs*, as well as manufacturers, to ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. The regulations adopted herein further the purpose of the *CVAA* to “update the communications laws to help ensure that

¹ 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). The *SBREFA* was enacted as Title II of the Contract With America Advancement Act of 1996 (“*CWAAA*”).

² See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108, Notice of Proposed Rulemaking, FCC 13-77 (rel. May 30, 2013) (“*NPRM*”).

³ See 5 U.S.C. § 604.

⁴ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.). See also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the *CVAA*). The foregoing are collectively referred to herein as the *CVAA*. The *CVAA* was enacted on October 8, 2010.

individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”⁵

3. Legal Basis. The authority for the action taken 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 Sections 4(i), 4(j), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(aa), 303(bb), and 617(g).

B. Summary of Significant Issues Raised in Response to the IRFA

4. No comments were filed in response to the IRFA.

5. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the *Second Report and Order*.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ 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.⁹ Small entities that are directly affected by the rules adopted in the *Second Report and Order* include manufacturers of digital apparatus and navigation devices and MVPDs.

7. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.”¹⁰ The SBA has developed a small business size standard for this category, which is: all such

⁵ H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010).

⁶ 5 U.S.C. § 603(b)(3).

⁷ *Id.* § 601(6).

⁸ *Id.* § 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.”

⁹ 15 U.S.C. § 632.

¹⁰ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service

(continued....)

businesses having 1,500 or fewer employees.¹¹ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹² Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.¹³ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

8. Cable Companies and Systems. The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹⁴ Industry data shows that there were 1,141 cable companies at the end of June 2012.¹⁵ Of this total, all but 10 incumbent cable companies are small under this size standard.¹⁶ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁷ Current Commission records show 4,945 cable systems nationwide.¹⁸ Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

9. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the

(Continued from previous page) _____
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").

¹¹ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

¹² U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹³ *Id.*

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

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

¹⁶ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (i.e., 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) ("CALM Act Report and Order") (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

¹⁷ 47 C.F.R. § 76.901(c).

¹⁸ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁹ There are approximately 56.4 million incumbent cable video subscribers in the United States today.²⁰ Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²¹ Based on available data, we find that all but 10 incumbent cable operators are small under this size standard.²² We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.²³ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

10. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,²⁴ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.²⁵ Census data for 2007 shows that there were 31,996 establishments that operated that year.²⁶ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.²⁷ Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other

¹⁹ 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

²⁰ *See* NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

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

²² *See* NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

²³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. *See* 47 C.F.R. § 76.901(f).

²⁴ *See* 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (*Emphasis* added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁵ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

²⁶ U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

²⁷ *Id.*

Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.²⁸ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.²⁹ Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

11. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,³⁰ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³¹ Census data for 2007 shows that there were 31,996 establishments that operated that year.³² Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.³³ Therefore, under this size standard, the majority of such businesses can be considered small.

12. Home Satellite Dish (HSD) Service. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.³⁴ The

²⁸ 13 C.F.R. § 121.201; NAICS code 517510 (2002).

²⁹ See *15th Annual Competition Report*, at ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at ¶¶ 27, 110-11.

³⁰ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³¹ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

³² U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³³ *Id.*

³⁴ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: “This industry comprises establishments primarily engaged in operating and/or providing
(continued....)

SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.³⁵ Census data for 2007 shows that there were 31,996 establishments that operated that year.³⁶ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.³⁷ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

13. Open Video Services. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.³⁸ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,³⁹ OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.⁴⁰ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁴¹ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁴² Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁴³ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we

(Continued from previous page) _____

access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁵ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

³⁶ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³⁷ *Id.*

³⁸ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, ¶ 135 (2009) (“*Thirteenth Annual Cable Competition Report*”).

³⁹ See 47 U.S.C. § 573.

⁴⁰ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴¹ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁴² U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁴³ *Id.*

note that the Commission has certified some OVS operators, with some now providing service.⁴⁴ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁴⁵ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

14. Wireless cable systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS)⁴⁶ and Educational Broadband Service (EBS)⁴⁷ to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁴⁸ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁴⁹ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁵⁰ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁵¹ Auction 86 concluded in 2009 with the sale of 61 licenses.⁵² Of the 10 winning bidders, two bidders that

⁴⁴ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

⁴⁵ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁴⁶ BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995).

⁴⁷ EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See *id.*

⁴⁸ 47 C.F.R. § 21.961(b)(1).

⁴⁹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1,500 or fewer employees.

⁵⁰ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁵¹ *Id.* at 8296.

⁵² *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

15. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services."⁵³ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁵⁴ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁵⁵ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁵⁶ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.⁵⁷ The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁵⁸

16. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.⁵⁹ Under this

⁵³ U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

⁵⁴ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁵⁵ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁵⁶ *Id.*

⁵⁷ <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

⁵⁸ The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁵⁹ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that

(continued....)

category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁶⁰ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁶¹ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁶² Therefore, under this size standard, the majority of such businesses can be considered small.

17. Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”⁶³ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.⁶⁴ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

18. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA’s economic census category, Wired Telecommunications Carriers.⁶⁵ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁶⁶ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁶⁷ Of this total, 30,178

(Continued from previous page) _____
they operate are included in this industry.” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁰ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁶¹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁶² *Id.*

⁶³ 15 U.S.C. § 632.

⁶⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

⁶⁵ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁶ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁶⁷ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007

(continued....)

establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁶⁸ Therefore, under this size standard, the majority of such businesses can be considered small.

19. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”⁶⁹ The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.⁷⁰ Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year.⁷¹ Of those, 912 operated with fewer than 500 employees, and 27 operated with 500 or more employees.⁷² Therefore, under this size standard, the majority of such establishments can be considered small.

20. Audio and Video Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.”⁷³ The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.⁷⁴ Census data for 2007 shows that there were 492 establishments in this category operated for part or all of the entire year.⁷⁵ Of those, 488 operated with fewer than 500 employees, and four operated with 500 or more employees.⁷⁶ Therefore, under this size standard, the majority of such establishments can be considered small.

(Continued from previous page) _____
Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁶⁸ *Id.*

⁶⁹ U.S. Census Bureau, 2012 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁰ 13 C.F.R. § 121.201; 2012 NAICS code 334220.

⁷¹ U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334220, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷² *Id.*

⁷³ U.S. Census Bureau, 2012 NAICS Definitions, “334310 Audio and Video Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁴ 13 C.F.R. § 121.201; 2012 NAICS code 334310.

⁷⁵ U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334310, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷⁶ *Id.*

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

21. In this section, we describe the reporting, recordkeeping, and other compliance requirements adopted in the *Second Report and Order* and consider whether small entities are affected disproportionately by these requirements.

22. *Reporting Requirements.* The *Second Report and Order* does not adopt reporting requirements.

23. *Recordkeeping and Other Compliance Requirements.* The *Second Report and Order* adopts certain recordkeeping and other compliance requirements, which are applicable to covered small entities. First, the *Second Report and Order* requires manufacturers of Section 204 digital apparatus to ensure that both the “appropriate built-in apparatus functions” and “on-screen text menus or other visual indicators built in to the digital apparatus” to access those functions be “usable by individuals who are blind or visually impaired.”⁷⁷ Specifically, the *Second Report and Order* requires manufacturers of Section 204 digital apparatus to ensure that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities.

24. Second, the *Second Report and Order* adopts information, documentation, and training requirements consistent with those set forth in Section 6.11 of our rules for entities covered by both Section 204 and Section 205 of the CVAA.⁷⁸ These rules require covered entities to ensure access to information and documentation it provides to its customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. In addition, the rules require covered entities to include the contact method for obtaining the required information and documentation in general product information, to consider certain accessibility-related topics when developing or modifying training programs, and to take other achievable steps, as necessary.

25. Third, the *Second Report and Order* imposes notification requirements for manufacturers of digital apparatus and navigation devices.⁷⁹ Digital apparatus manufacturers must provide prominent notice on their official websites about the availability of accessible digital apparatus in a website format that is accessible to people with disabilities. The notice must publicize the availability of accessible devices and the specific person, office, or entity who can answer consumer questions about which products contain the required accessibility features. Navigation device manufacturers must also provide prominent notice on their official website about the availability of accessible navigation devices in a website format that is accessible to people with disabilities. For navigation device manufacturers, the notice must publicize the availability of accessible devices and solutions and explain the means for making requests for accessible equipment and the specific person, office, or entity to which such requests are to be made.

26. *Potential for disproportionate impact on small entities.* Section 204 of the CVAA requires both “the appropriate built-in apparatus functions” and “on-screen text menus or visual indicators built in to the digital apparatus” to access those functions to be “usable by individuals who are blind or visually impaired.”⁸⁰ The *Second Report and Order* adopts the definition of “usable” in Section 6.3(1) of

⁷⁷ See *Second Report and Order*, Section III.A.

⁷⁸ See *id.*

⁷⁹ See *id.* Section III.B.1.

⁸⁰ 47 U.S.C. §§ 303(aa)(1)-(2).

the Commission's rules to implement this Section 204 mandate.⁸¹ The definition of "usable" requires that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities. No commenter provided information concerning the costs and administrative burdens associated with this specific compliance requirement. Nevertheless, both industry and consumer commenters supported the Commission's application of the Section 6.3(l) "usable" definition to implement Section 204.⁸² Manufacturers must comply with the usability standard only if compliance is "achievable."⁸³ Thus, in the event that this compliance requirement disproportionately affects small entities, the Commission will have a way to minimize the impact on such entities (see discussion below in Section E of this FRFA).

27. The *Second Report and Order* also adopts the information, documentation, and training requirements in Section 6.11 of the Commission's rules for Section 204 digital apparatus and Section 205 navigation devices.⁸⁴ Specifically, the rules the Commission adopts require covered entities to ensure access to information and documentation it provides to its customers, if achievable. This includes user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. This requirement also considers achievability, which will allow to minimize the impact on small entities, and still further recognizes the impact on small businesses by requiring "other achievable steps" that should only be taken "as necessary."⁸⁵ In the record of this proceeding, the American Cable Association ("ACA") expressed concern that the information, documentation, and training requirements "would . . . disproportionately burden smaller cable operators who would have to produce the required accessibility support materials and training without the benefits of scale to help them to spread the costs of such initiatives over a large user base."⁸⁶ As such, ACA requested that small- and medium-sized cable operators receive an extended deadline to come into compliance with any information, documentation, and training requirements imposed on Section 205 entities.⁸⁷ The Commission agrees that providing some relief to small- and mid-sized operators is reasonable. The *Second Report and Order* notes that the Commission in the *Report and Order* already delayed the time by which mid-sized and smaller MVPD operators and small MVPD systems must comply with the requirements of Section 205 by two years.⁸⁸ Therefore, while MVPDs generally must comply with the rules adopted in the *Second Report and Order* by December 20, 2016, certain mid-sized and smaller MVPD operators and small MVPD systems need not comply until December 20, 2018. This delay afforded to certain mid-sized and smaller MVPD operators and small MVPD systems will provide sufficient time in which to implement the information, documentation, and

⁸¹ See *Second Report and Order*, Section III.A.

⁸² See CEA Comments at 2-3; DISH/EchoStar Comments at 2; Wireless RERC Reply at 4.

⁸³ 47 C.F.R. § 79.107(c). Section 79.107(c)(2) defines "achievable" as "with reasonable effort or expense." *Id.* § 79.107(c)(2).

⁸⁴ See *Second Report and Order*, Section III.A.

⁸⁵ 47 C.F.R. §§ 79.107(c), 79.108(c).

⁸⁶ ACA Reply at 4.

⁸⁷ See *id.* at 3-5.

⁸⁸ See 47 C.F.R. § 79.108(b); *Report and Order and Further Notice*, 28 FCC Rcd at 17401-05, ¶¶ 114-19. Specifically, (1) MVPD operators with 400,000 or fewer subscribers as of year-end 2012; and (2) MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012, were afforded with a two-year delay of the compliance deadline. *Id.* These MVPDs must be in compliance with the rules by December 20, 2018. The Commission also committed to undertake a review of the marketplace after the December 20, 2016 compliance deadline for larger MVPDs to consider whether the delayed compliance deadline should be retained or extended (in whole or in part). *Report and Order and Further Notice*, 28 FCC Rcd at 17401, ¶ 114.

training requirements adopted in the *Second Report and Order*. In addition, we note that covered entities, including small entities, may petition for a waiver of these requirements for good cause pursuant to the existing waiver process in Section 1.3 of our rules.⁸⁹

28. The *Second Report and Order* also imposes notification requirements for manufacturers of digital apparatus and navigation devices and MVPDs.⁹⁰ No commenter provided information concerning the costs and administrative burdens associated with this specific compliance requirement.

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

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁹¹ The *FNPRM* invited comment on issues that had the potential to have significant impact on some small entities.⁹²

30. The rules adopted in this *Second Report and Order* may have a significant economic impact in some cases, and that impact may affect small entities. Although the Commission has considered alternatives where possible, as directed by the RFA, to minimize economic impact on small entities, we emphasize that our action is governed by the congressional mandate contained in Sections 204 and 205 of the CVAA.

31. In formulating the final rules, however, the Commission has considered a number of methods to minimize the economic impact on small entities. With regard to the usability and information, documentation, and training requirements modeled on Sections 6.3(l) and 6.11, the *Second Report and Order* adopts procedures enabling the Commission to grant exemptions to the rules where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense).⁹³ This process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, on a case-by-case basis and to modify the application of the rules to accommodate individual circumstances, which can reduce the costs of compliance for these entities. We note that two of the four statutory factors that the Commission will consider in determining achievability are particularly relevant to small entities: the nature and cost of the steps needed to meet the requirements, and the technical and economic impact on the entity's operations.

32. The *Second Report and Order* also adopts consumer notification requirements for manufacturers of both digital apparatus and navigation devices and MVPDs. Specifically, manufacturers are required to publicize the availability of accessible devices on their websites (which must also be accessible for those with disabilities).⁹⁴ Both manufacturers and MVPDs must ensure that the contact office or person listed on their website is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features. The Commission has not dictated the means by which manufacturers must comply

⁸⁹ See 47 C.F.R. § 1.3.

⁹⁰ See *Second Report and Order*, Section III.B.

⁹¹ 5 U.S.C. § 603(c)(1)-(c)(4).

⁹² See *Report and Order and Further Notice*, 28 FCC Rcd at 17413-20, ¶¶ 138-52.

⁹³ See *Second Report and Order*, Section III.A.

⁹⁴ See *id.* Section III.B.1.

with the requirements. Furthermore, in an attempt to simplify the notification requirements and facilitate small entity compliance, the Commission limits these requirements to websites only.⁹⁵

33. Further, MVPD operators with 400,000 or fewer subscribers as of year-end 2012, and MVPD systems with 20,000 or fewer subscribers that are not affiliated with an operator serving more than 10 percent of all MVPD subscribers as of year-end 2012, were afforded with a two-year delay of the compliance deadline for the requirements adopted pursuant to Section 205 of the CVAA, and this deadline also applies to the rules adopted in the *Second Report and Order*. The delayed compliance deadline for small MVPDs will help minimize any disproportionate impact of the requirements adopted in the *Second Report and Order*.

34. Overall, we believe we have appropriately considered both the interests of individuals with disabilities and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress' goal to "update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming."⁹⁶

F. Report to Congress

35. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁹⁷ In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Second Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.⁹⁸

⁹⁵ *Id.*

⁹⁶ H.R. Rep. No. 111-563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111-386, 111th Cong., 2d Sess. at 1 (2010).

⁹⁷ See 5 U.S.C. § 801(a)(1)(A).

⁹⁸ See *id.* § 604(b).

APPENDIX D**Proposed Rules**

For the reasons discussed above, the Federal Communications Commission amends Title 47 of the Code of Federal Regulations, Part 79, as follows:

PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

1. The authority 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 § 79.103 by adding paragraph (e) to read as follows:

(e) *Access to closed captioning display settings.* Effective [insert date], apparatus subject to this section must ensure that consumers are able to readily access user display settings for closed captioning, if technically feasible, except that apparatus that use a picture screen of less than 13 inches in size must comply with this requirement only if doing so is achievable as defined in this section.

APPENDIX E

Initial Regulatory Flexibility Act Analysis for the *Second Further Notice of Proposed Rulemaking*

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 economic impact on small entities by the policies and rules proposed in the *Second Further Notice*. 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 as specified in the *Second Further Notice*. The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *Second Further Notice* and this IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rule Changes

2. In the *Second Further Notice*, the Commission seeks comment on a proposal to adopt rules that would require manufacturers and multichannel video programming distributors (“MVPDs”) to ensure that consumers are able to readily access user display settings for closed captioning and seeks comment on the Commission’s authority to adopt such rules under the Television Decoder Circuitry Act of 1990 (“TDCA”).⁴ The TDCA, as codified in Section 330(b) of the Act, provides that “[a]s new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that closed-captioning service continues to be available to consumers.”⁵ In enacting the TDCA, Congress stated that “to the fullest extent made possible by technology,” persons who are deaf and hard of hearing “should have equal access to the television medium.”⁶ Although the rules implemented in 2000 were intended to provide consumers with the benefits of customization for closed captioning (*i.e.*, the ability to alter fonts, sizes, colors, backgrounds and more), the record indicates that these features remain inaccessible to many viewers who are deaf and hard of hearing because they are difficult to locate and use. The proposed rules requiring that consumers are able to readily access user display settings for closed captioning will “ensure that closed-captioning service continues to be available to consumers” and, in particular, that the benefits of being able to alter colors, fonts, and sizes offered by digital captioning technology fully accrue to individuals who are deaf or hard of hearing.⁷

B. Legal Basis

3. The proposed action is authorized pursuant to the Television Decoder Circuitry Act of 1990, Pub. L. No. 101-431, 104 Stat. 960, and the authority contained in Sections 4(i), 4(j), 303(u), and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(u), 330(b).

¹ 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).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

⁵ 47 U.S.C. § 330(b).

⁶ Pub. L. No. 101-431, § 2(1).

⁷ 47 U.S.C. § 330(b).

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

4. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules proposed in the *Second Further Notice*.⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰ 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.¹¹ Small entities that are directly affected by the rules proposed in the *Second Further Notice* include manufacturers of apparatus covered by Section 303(u)(1) of the Act¹² (*i.e.*, apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size) and MVPDs.

5. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.”¹³ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.¹⁴ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁵ Of this total, 30,178 establishments had fewer than 100

⁸ 5 U.S.C. § 603(b)(3).

⁹ *Id.* § 601(6).

¹⁰ *Id.* § 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.”

¹¹ 15 U.S.C. § 632.

¹² 47 U.S.C. § 303(u)(1).

¹³ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (“CCTV”) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (“DTH”) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (“MMDS”).

¹⁴ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

¹⁵ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

employees, and 1,818 establishments had 100 or more employees.¹⁶ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

6. Cable Companies and Systems. The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹⁷ Industry data shows that there were 1,141 cable companies at the end of June 2012.¹⁸ Of this total, all but 10 incumbent cable companies are small under this size standard.¹⁹ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁰ Current Commission records show 4,945 cable systems nationwide.²¹ Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

7. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²² There are approximately 56.4 million incumbent cable video subscribers in the United States today.²³ Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁴ Based on available data, we find that all but 10 incumbent

¹⁶ *Id.*

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

¹⁸ NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, FCC 13-99 at ¶ 24 (rel. July 22, 2013) ("15th Annual Competition Report").

¹⁹ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (*i.e.*, 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222, 17245-46, ¶ 37 (2011) ("CALM Act Report and Order") (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

²⁰ 47 C.F.R. § 76.901(c).

²¹ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

²² 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

²³ See NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

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

cable operators are small under this size standard.²⁵ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.²⁶ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,²⁷ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.²⁸ Census data for 2007 shows that there were 31,996 establishments that operated that year.²⁹ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.³⁰ Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.³¹ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.³² Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital,

²⁵ See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

²⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.901(f).

²⁷ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁸ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

²⁹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³⁰ *Id.*

³¹ 13 C.F.R. § 121.201; NAICS code 517510 (2002).

³² See *15th Annual Competition Report*, at ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at ¶¶ 27, 110-11.

we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

9. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers,³³ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³⁴ Census data for 2007 shows that there were 31,996 establishments that operated that year.³⁵ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.³⁶ Therefore, under this size standard, the majority of such businesses can be considered small.

10. Home Satellite Dish (HSD) Service. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.³⁷ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.³⁸ Census data for 2007 shows that there were 31,996 establishments that

³³ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*" (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁴ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

³⁵ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³⁶ *Id.*

³⁷ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁸ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

operated that year.³⁹ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁴⁰ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

11. Open Video Services. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.⁴¹ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁴² OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.⁴³ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁴⁴ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁴⁵ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁴⁶ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁴⁷ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁴⁸ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

³⁹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁴⁰ *Id.*

⁴¹ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, ¶ 135 (2009) (“*Thirteenth Annual Cable Competition Report*”).

⁴² See 47 U.S.C. § 573.

⁴³ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.” U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴⁴ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁴⁵ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁴⁶ *Id.*

⁴⁷ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

⁴⁸ See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07, ¶ 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

12. Wireless cable systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS)⁴⁹ and Educational Broadband Service (EBS)⁵⁰ to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁵¹ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.⁵² After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁵³ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁵⁴ Auction 86 concluded in 2009 with the sale of 61 licenses.⁵⁵ Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

13. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.

⁴⁹ BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). *See Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995).

⁵⁰ EBS was previously referred to as the Instructional Television Fixed Service (ITFS). *See id.*

⁵¹ 47 C.F.R. § 21.961(b)(1).

⁵² 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

⁵³ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

⁵⁴ *Id.* at 8296.

⁵⁵ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

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.”⁵⁶ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁵⁷ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁵⁸ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁵⁹ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission’s internal records indicate that as of September 2012, there are 2,241 active EBS licenses.⁶⁰ The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁶¹

14. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA’s economic census category, Wired Telecommunications Carriers.⁶² Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁶³ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁶⁴ Of this total, 30,178

⁵⁶ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (“CCTV”) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (“DTH”) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (“MMDS”).

⁵⁷ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

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

⁵⁹ *Id.*

⁶⁰ <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

⁶¹ The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁶² See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶³ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁶⁴ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁶⁵ Therefore, under this size standard, the majority of such businesses can be considered small.

15. Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”⁶⁶ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.⁶⁷ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

16. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA’s economic census category, Wired Telecommunications Carriers.⁶⁸ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁶⁹ Census data for 2007 shows that there were 31,996 establishments that operated that year.⁷⁰ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.⁷¹ Therefore, under this size standard, the majority of such businesses can be considered small.

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

⁶⁵ *Id.*

⁶⁶ 15 U.S.C. § 632.

⁶⁷ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

⁶⁸ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁹ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

⁷⁰ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷¹ *Id.*

communications equipment, and radio and television studio and broadcasting equipment.”⁷² The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.⁷³ Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year.⁷⁴ Of those, 912 operated with fewer than 500 employees, and 27 operated with 500 or more employees.⁷⁵ Therefore, under this size standard, the majority of such establishments can be considered small.

18. Audio and Video Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.”⁷⁶ The SBA has developed a small business size standard for this category, which is: all such businesses having 750 or fewer employees.⁷⁷ Census data for 2007 shows that there were 492 establishments in this category operated for part or all of the entire year.⁷⁸ Of those, 488 operated with fewer than 500 employees, and four operated with 500 or more employees.⁷⁹ Therefore, under this size standard, the majority of such establishments can be considered small.

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

19. In the *Second Further Notice*, the Commission seeks comment on a proposal to adopt rules that would require manufacturers and MVPDs to ensure that consumers are able to readily access user display settings for closed captioning and seeks comment on the Commission’s authority to adopt such rules under the TDCA.⁸⁰ In this section, we describe the reporting, recordkeeping, and other compliance requirements proposed in the *Second Further Notice* and consider whether small entities are affected disproportionately by any such requirements.

20. *Reporting Requirements.* The *Second Further Notice* does not propose to adopt reporting requirements.

21. *Recordkeeping Requirements.* If the rules proposed in the *Second Further Notice* were adopted, certain recordkeeping requirements would be applicable to covered small entities. The *Second*

⁷² U.S. Census Bureau, 2012 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷³ 13 C.F.R. § 121.201; 2012 NAICS code 334220.

⁷⁴ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334220, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷⁵ *Id.*

⁷⁶ U.S. Census Bureau, 2012 NAICS Definitions, “334310 Audio and Video Equipment Manufacturing” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁷ 13 C.F.R. § 121.201; 2012 NAICS code 334310.

⁷⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2007 – 2007 Economic Census,” NAICS code 334310, Table EC0731SG3; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷⁹ *Id.*

⁸⁰ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)).

Further Notice asks whether we should apply the exceptions relating to technical feasibility and achievability in Section 303(u) of the Act consistent with our precedent in the *IP Closed Captioning Order*.⁸¹ These provisions would require covered entities to make a filing and, thus, to make and keep records of the filing.

22. *Other Compliance Requirements.* The *Second Further Notice* proposes other compliance requirements that would be applicable to covered small entities. In particular, the *Second Further Notice* seeks comment on whether the TDCA gives the Commission authority to adopt further implementing regulations to ensure that consumers are able to readily access user display settings for closed captioning. The *Second Further Notice* seeks comment on how the Commission would implement a requirement that consumers be able to readily access user display settings for closed captioning and, in particular, whether to require that inclusion of closed captioning display settings must be no lower than the first level of a menu.

23. We do not have specific information quantifying the costs and administrative burdens associated with the rules proposed in the *Second Further Notice* because it has not yet been determined how covered entities will implement a requirement that consumers be able to readily access user display settings for closed captioning. Thus, we cannot precisely estimate the impact of the rules proposed in the *Second Further Notice* on small entities. We note that CEA has reported that some industry members are already planning to take steps to facilitate access to user display settings for closed captioning and thus, the burden for some covered entities may be minimal.⁸² Further, as discussed in Section E *infra*, we explore whether entities subject to the proposed rules need not comply with the requirements if they are able to demonstrate to the Commission that compliance is not achievable.⁸³ While the economic impact of the rules on small entities is not quantifiable at this time, the proposed rules, if adopted, could affect small companies to a greater extent than large companies. As a result, the Commission in Section E below considers alternatives that have the potential to minimize the economic effect of its proposed rules on small entities.

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

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁸⁴

⁸¹ See 47 U.S.C. §§ 303(u), 303(u)(2); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Report and Order, 27 FCC Rcd 787, 848-49, ¶¶ 97-98, 104-05 (2012) (“*IP Closed Captioning Order*”). See also *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785, 8788-93, ¶¶ 5-15 (2013).

⁸² See Letter from Julie M. Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108, at 2 (Mar. 3, 2015).

⁸³ See 47 U.S.C. § 303(u)(2) (requiring that certain apparatus comply with accessibility requirements in Section 303(u)(1) of the Act only “if achievable”).

⁸⁴ 5 U.S.C. § 603(c)(1)-(c)(4).

25. The rules proposed in the *Second Further Notice*, if adopted, could have a significant economic impact on small entities.⁸⁵ As discussed below, Section 303(u) of the Act contains provisions that allow the Commission to tailor its rules, as necessary, to small entities for whom compliance with such rules is economically burdensome, and we inquire in the *Second Further Notice* whether these exceptions should apply. Notably, we ask whether an entity (including a small entity) should avoid compliance with a requirement to ensure that users can readily access closed captioning display settings if it is able to demonstrate to the Commission that such compliance is not “achievable” (*i.e.*, cannot be accomplished with reasonable effort or expense) or is not “technically feasible.” These procedures will allow the Commission to address the impact of the rules on individual entities, including smaller entities, on a case-by-case basis, and to modify application of its rules to accommodate individual circumstances, thereby potentially reducing the costs of compliance for such entities. We note that two of the four statutory factors that the Commission must consider in assessing achievability are particularly relevant to small entities: (i) the nature and cost of the steps needed to meet the requirements, and (ii) the technical and economic impact on the entity’s operations. Thus, a small entity may be able to avoid compliance in cases where it can demonstrate that compliance is not achievable.

26. Further, the Commission seeks comment on how alternative ways to implement a requirement that consumers be able to readily access user display settings for closed captioning, as well as on the costs and benefits of such a requirement and the impact of the proposed rules on small entities. These considerations will allow the Commission to address alternatives that can potentially minimize the burden and costs of compliance for covered entities, including smaller entities.

27. Based on these considerations, we believe that, in proposing additional rules in the *Second Further Notice*, we have appropriately considered both the interests of individuals with disabilities and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress’s intent that “to the fullest extent made possible by technology,” persons who are deaf and hard of hearing “should have equal access to the television medium.”⁸⁶

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

28. None.

⁸⁵ In the *Second Further Notice*, the Commission seeks comment on the impact of its proposed rules on small entities. See *Second Report and Order*, Section V.

⁸⁶ Pub. L. No. 101-431, § 2(1).

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND CONCURRING IN PART**

Re: *Accessibility of User Interfaces, and Video Programming Guides and Menus*, MB Docket No. 12-108.

On the whole, I believe that this item takes a reasonable and balanced approach to our continued implementation of sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). However, I do not necessarily agree with every determination made by the Commission here.

Most notably, I am skeptical that section 205 of the CVAA provides us with the authority to apply to navigation devices the same information, documentation, and training requirements currently applicable to digital apparatus covered by section 204. While it might make sense from a policy perspective to regulate section 204 apparatus and section 205 navigation devices similarly, Congress chose to include certain requirements in section 204 that are nowhere to be found in section 205, and I believe that our regulations should reflect that fact. For example, Congress chose to place a usability mandate in section 204¹ that is nowhere to be found in section 205.² And critically for purposes of this item, we previously relied on that section 204 usability mandate to impose information, documentation, and training requirements on digital apparatus. Therefore, applying these same requirements to section 205 navigation devices, which has no usability provision, does not appear to respect the distinctions drawn by Congress in the CVAA.

For this reason, I am voting to approve in part and concur in part.

¹ See Communications Act § 303(aa)(1) (requiring that covered apparatus be “usable by individuals who are blind or visually impaired”).

² See Communications Act § 303(bb).