

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

In the Matter of	)	
	)	
Update to Publication for Television Broadcast	)	MB Docket No. 22-239
Station DMA Determinations for Cable and	)	
Satellite Carriage	)	
	)	

**REPORT AND ORDER**

**Adopted: November 17, 2022**

**Released: November 18, 2022**

By the Chairwoman Rosenworcel issuing a statement:

**I. INTRODUCTION**

1. In this *Report and Order*, with the unanimous support of commenters, we adopt the Commission's tentative conclusion to use the Nielsen Company's (Nielsen) Local TV Station Information Report (Local TV Report) as the successor publication to the annual Station Index Directory (Annual Station Index) and United States Television Household Estimates (Household Estimates) in determining a television station's designated market area (DMA) for satellite and cable carriage under the Commission's regulations.<sup>1</sup> In doing so, we ensure that all parties have the appropriate DMA information and use consistent data to determine markets for purposes of the Commission's carriage rules.

**II. BACKGROUND**

2. Pursuant to the Act, and the implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their market.<sup>2</sup> Similarly, section 338 of the Act<sup>3</sup> requires satellite carriers to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.<sup>4</sup> A station's market for cable and satellite carriage is its DMA, as currently defined by Nielsen's Annual Station Index and Household

<sup>1</sup> 47 CFR §§ 76.55(e)(2), 76.66(e)(2).

<sup>2</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2975-77, paras. 41-46 (1993). The Commission subsequently extended mandatory carriage rights to digital television stations under section 614(a) of the Act and amended its rules accordingly. *Carriage of Digital Television Broadcast Signals*, First Report and Order, 16 FCC Rcd 2598, 2606, paras. 15-16, 2610, para. 28 (2001); 47 CFR § 76.64(f)(4).

<sup>3</sup> 47 U.S.C. § 338, adopted as part of the Satellite Home Viewer Improvement Act of 1999. In November 2000, the Commission adopted rules to implement the provisions contained in section 338. *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, CS Docket No. 00-96, Report and Order, 16 FCC Rcd 1918, 1934, para. 15 (2000) (*SHVIA Order*).

<sup>4</sup> 47 CFR § 76.66(a)(6). Pursuant to Section 338, satellite carriers are not required to carry local broadcast television stations; however, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the local statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage. *See* 47 U.S.C. § 338(k)(4) (cross-referencing 17 U.S.C. § 122). Satellite carriers have a statutory copyright license under SHVIA for carriage of stations to any subscriber within a station's local market. Pub. L. No. 106-113, 113 Stat. 1501 (1999); *see also* 47 U.S.C. § 338(a)(1); 47 CFR § 76.66(b)(1). This is commonly referred to as the "carry one, carry all" requirement.

Estimates “or any successor publications.”<sup>5</sup> The implementing regulations also specify which edition of the Annual Station Index is to be used for each election cycle (specifically, the one published the year prior to the election that is based on information gathered in October two years prior to that election).<sup>6</sup>

3. The Commission initiated this proceeding because the Nielsen Company informed us that its Nielsen Media Research division has replaced the Annual Station Index with the monthly Local TV Report, and subsequently clarified that the Household Estimates publication is no longer necessary for DMA determinations.<sup>7</sup> In the *NPRM*, we tentatively concluded that we should revise our rules to use the Local TV Report as the successor publication to determine a station’s DMA and sought comment on related questions.<sup>8</sup> In response to the *NPRM*, the Commission received comments and replies from seven parties, including comments from the broadcast industry (National Association of Broadcasters (NAB); ABC Television Affiliates Association, CBS Television Network Affiliates, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the Affiliates); and America’s Public Television Stations and the Public Broadcasting Service (collectively, APTS)), multichannel video programming distributor (MVPD) industry (NCTA – The Internet & Television Association (NCTA); DIRECTV, LLC (DIRECTV)), a state regulator (Massachusetts Department of Telecommunications and Cable (MDTC)), and Nielsen itself. As discussed more fully below, no commenter opposed the replacement of the Annual Station Index with the Local TV Report or any of our other tentative conclusions.

### III. DISCUSSION

4. We adopt our tentative conclusion from the *NPRM* to amend our rules to eliminate the references to the Annual Station Index and Household Estimates and specify the Local TV Report as the successor publication to be used to determine a station’s DMA.<sup>9</sup> No commenter opposes this conclusion.<sup>10</sup> We also adopt our tentative conclusion that the Local TV Report should be used to define

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<sup>5</sup> 47 CFR §§ 76.55(e)(2), 76.66(e)(2). Section 614(h)(1)(C) of the Act provides that a station’s market “shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns.” 47 U.S.C. § 534(h)(1)(C). Sections 76.55(e)(2) and 76.66(e)(2) of the Commission’s rules specify that a commercial broadcast television station’s market is its DMA as determined by The Nielsen Company. 47 CFR § 76.55(e)(2) (“Effective January 1, 2000, a commercial broadcast television station’s market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.”); 47 U.S.C. § 338(k)(4) (cross-referencing 17 U.S.C. § 122(j)(2)); 47 CFR § 76.66(e)(2) (“A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication. In the case of areas outside of any designated market area, any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.”).

<sup>6</sup> 47 CFR §§ 76.55(e)(2)(i-ii), 76.66(e)(3) (e.g., for elections made in 2005, the 2003-2004 edition was used).

<sup>7</sup> *Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage*, MB Docket No. 22-239, Notice of Proposed Rulemaking, 2022 WL 2805874, FCC No. 22-55 (rel. July 14, 2022) (*NPRM*).

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

<sup>9</sup> *NPRM* at para. 4.

<sup>10</sup> *See, e.g.*, NAB Comments at 2; NCTA Comments at 1-2; DIRECTV Comments at 1-2; Affiliates Comments at 1. We decline to address proposals in the record that are outside the scope of this proceeding. For example, MDTC requests that the Commission define a commercial television broadcast station’s market in a way that allows all residents to receive in-state broadcast stations by amending the Commission’s significantly viewed rules and/or its market modification process. MDTC Comments; *but see* NAB Reply (asking the Commission to reject the MDTC proposal). *See also generally* APTS Comments (noting concerns about headend consolidation, geographic changes to DMAs over time, and the lack of consistent statewide carriage, by satellite providers, of public TV stations with

(continued....)

“local market” as stated in other statutory provisions and rules relating to carriage, including retransmission consent, distant signals, significantly viewed, and field strength contour.<sup>11</sup> We agree with NAB’s contention that it is imperative that stations and MVPDs work from a “single playbook,”<sup>12</sup> and the record indicates that the Local TV Report is the sole source of information regarding DMA determinations. Specifically, as the Commission previously noted and Nielsen reemphasizes, there is no company currently accredited to determine the local market area of broadcast television stations.<sup>13</sup> Similarly, NAB indicates that it is not aware of any non-Nielsen publication that offers “market assignment information” for television stations, and as a result there is currently no option for determining broadcast station markets other than Nielsen’s DMAs.<sup>14</sup> As noted in the *NPRM*, the Local TV Report generally contains the same market assignment information as the Annual Station Index, though it does not regularly include all low-power and Class A stations.<sup>15</sup> Some commenters explained that this “missing” information on low-power and Class A stations could be useful in certain circumstances,<sup>16</sup> and Nielsen reiterated its commitment to make this information available to subscribers upon request.<sup>17</sup> Thus, in reliance on this commitment by Nielsen, and with no other viable alternative presented, we adopt our tentative conclusion from the *NPRM* that the references to the Annual Station Index and Household Estimates be deleted and replaced with the Local TV Report.<sup>18</sup>

5. We also amend the rule to specifically reference the October Local TV Report published two years prior to each triennial carriage election.<sup>19</sup> As we noted in the *NPRM*, the Annual Station Index relied upon in each triennial carriage election was based on information gathered in the October two years

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statewide licenses). Both of these comments are unrelated to the selection of a successor publication to the Annual Station Index and Household Estimates, and therefore are outside the scope of this proceeding.

<sup>11</sup> *NPRM*, 2022 WL 2805874 at para. 6 & n. 19. See, e.g., 47 U.S.C. § 325(b)(7)(E) (retransmission consent); 47 U.S.C. § 339(d)(1) (carriage of distant signals by satellite carriers); 47 U.S.C. § 340(i)(1) (significantly viewed); 47 CFR 76.54(e) (significantly viewed); 47 CFR § 76.65(b)(3)(i) (retransmission consent); 47 CFR § 73.683(f) (field strength contours). Because these statutory and rule provisions incorporate or reference the definition of “local market,” they are directly affected by the elimination of the Annual Station Index. There were no comments on this tentative conclusion.

<sup>12</sup> NAB Comments at 3.

<sup>13</sup> *NPRM* at n.7; Nielsen Comments at 3. Nielsen concedes that it lost its accreditation from the Media Ratings Council last year, but it explains that many of the issues raised by the Council “are issues related to problems Nielsen encountered during COVID, which presented substantial challenges for a service like Nielsen’s that relies on panels and in-home visits,” and that it “has been working hard with the Council to address its concerns and hopes to have its accreditation restored in the near future.” Nielsen Comments at 3.

<sup>14</sup> NAB Comments at 2; see also Affiliates Comments at 2 (stating they are “unaware of any viable alternative market assignment data source at this time”).

<sup>15</sup> *NPRM* at para. 5 (explaining that the Local TV Report includes low-power and Class A television stations only if they reach a de minimis average audience size threshold).

<sup>16</sup> See DIRECTV Comments at 2 (indicating that it sometimes benefits from knowing low-power and Class A station DMA assignments in the context of its private contractual relationships with major-network affiliates); see also NCTA Comments at 2, n.6 (acknowledging that such information currently has no regulatory significance, but arguing that “if in the future the Commission changes its rules in any way such that DMA assignments are relevant to LPTV or Class A stations, it should amend its rules to ensure that the Local TV Report data for these stations is made available”); NAB Comments at 4-5 (stating that it “knows of no differences in the two reports or implications for other statutory or rule provisions that would warrant modifications to the proposed rule changes”).

<sup>17</sup> Nielsen Comments at 2.

<sup>18</sup> The Commission will consider revisiting this issue if we receive evidence that this information is not being provided as needed, or results in an undue burden on the interested parties.

<sup>19</sup> *NPRM* at para. 4.

prior to that election.<sup>20</sup> Thus, use of the October Local TV Report published two years before each carriage election allows for an “apples-to-apples” comparison with the data from the Annual Station Index.<sup>21</sup> Commenters support this approach, citing the need for stations to have certainty regarding their DMA assignments,<sup>22</sup> the need for MVPDs and broadcasters to have enough time to coordinate adjustments resulting from DMA assignment changes,<sup>23</sup> and the need for satellite carriers to have time to move stations from one DMA to another without causing operational and service issues.<sup>24</sup> Based upon the record support for this change, we amend the rule to specify that DMA determinations will be based on the October Local TV Report published two years prior to the triennial election.<sup>25</sup>

6. Finally, we note that in his separate statement to the *NPRM*, Commissioner Simington expressed concern about the Commission’s reliance on Nielsen data in numerous Commission rules and suggested that the Commission open an inquiry into whether our reliance on Nielsen is justified.<sup>26</sup> Nielsen, NAB, and the Affiliates address this issue.<sup>27</sup> NAB asks the Commission to “monitor developments in the marketplace for data gathering and analysis concerning the broadcast industry,” to consider alternative data sources that may become available in the future, and to “look for ways for licensees that subscribe to different audience measurement services to have free or low-cost access to Nielsen’s proprietary DMA assignment information.”<sup>28</sup> The Affiliates support “NAB’s general request that the Commission exercise prudence in relying solely on confidential Nielsen data when it comes to local television stations’ compliance with Commission rules.”<sup>29</sup> Nielsen, on the other hand, disagrees that there should be any concern about the Commission’s reliance on Nielsen and argues that, despite “fierce competition,” it “remains the go-to source in audience measurement because it has invested far more than any of its competitors in panel measurement and sampling to complement ‘big data’ such as return-path data.”<sup>30</sup> In response to the concerns expressed by NAB and the Affiliates, Nielsen clarified that it has

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

<sup>21</sup> *Id.*; see also Nielsen Comments at 2.

<sup>22</sup> NAB Comments at 4; see also Affiliates Comments at 2 (observing that use of the October report two years prior to the election date “would maintain consistency and certainty in the DMA assignment process, although using a date closer to the actual election date would promote greater accuracy in market assignments and perhaps better serve viewers,” and stating that the Affiliates “would support either approach”).

<sup>23</sup> NCTA Comments at 2.

<sup>24</sup> DIRECTV Comments 2.

<sup>25</sup> We also adopt the *NPRM*’s tentative conclusion to remove the rules’ references to specific effective dates. *NPRM* at para. 4. DIRECTV proposed that we add language to section 76.55(e)(2)(i) to state specifically that the DMA list for 2023 becomes “effective on January 1, 2024.” See DIRECTV Comments at 2, n. 4. However, we believe that such language is not necessary because the revised rules state that the change is for the 2023 election and those thereafter, and the Commission’s rules at 47 CFR §§ 76.64(f) and 76.66(c) already define the time periods covered by each carriage election. See 47 CFR §§ 76.64(f), 76.66(c).

<sup>26</sup> *NPRM*, 2022 WL 2805874 at \*20-\*22 (Commissioner Simington’s statement notes that Nielsen’s data is used to determine a broadcast station’s DMA, whether it is significantly viewed, and whether it is “within the Top 4 in the market.”).

<sup>27</sup> NAB Comments at 1, 3; Affiliates Comments at 3; Nielsen Comments at 2-3.

<sup>28</sup> NAB Comments at 1, 3. NAB suggests that “whenever possible, the Commission should permit stations to rely on reputable data sources other than Nielsen.” *Id.* at 5. In some cases, the Commission’s rules already permit this when appropriate alternative sources of data are available. See e.g., 47 CFR § 76.59(b)(6) (inviting petitioners to cite either ratings data of the type provided by Nielsen or “other specific audience indicia”). In other cases where our rules require Nielsen data, unless constrained by statutory requirements, we are open to considering waiver requests to use reputable alternative data sources.

<sup>29</sup> Affiliates Comment at 3.

<sup>30</sup> Nielsen Comments at 3.

“always told stations the DMAs to which they have been assigned upon request and free of charge” and will continue that process, and there is no dispute in the record on this point.<sup>31</sup> In addition, it will begin offering DMA maps to non-clients at “a reasonable charge” and continue offering “ratings information to non-clients at special prices for the limited use of preparing for assignments and transfers of control.”<sup>32</sup> Nielsen acknowledges the loss of accreditation, which it attributes in large part to problems arising from the COVID pandemic, but notes that it is working toward reaccreditation and remains the only entity that has ever been accredited.<sup>33</sup> In light of the limited record on these issues and the fact that there is currently no apparent alternative data source for the Commission to rely upon, we find it premature to initiate a proceeding at this time. But we will continue to monitor this issue, and we encourage stakeholders to keep us apprised of changes in the broadcast audience measurement market.

#### IV. PROCEDURAL MATTERS

7. *Paperwork Reduction Act Analysis.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(e)(4).

8. *Congressional Review Act.* The Commission has determined and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

9. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>34</sup> an Initial Regulatory Flexibility Certification was incorporated into the *NPRM*.<sup>35</sup> Pursuant to the Regulatory Flexibility Act of 1980, as amended,<sup>36</sup> the Commission’s Final Regulatory Flexibility Certification relating to this *Report and Order* is attached as Exhibit C.

#### V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 303, 325, 335, 338, 339, 340, 403, and 614 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 154(j), 303, 325, 335, 338, 339, 340, 403, and 534 this Report and Order **IS ADOPTED**.

11. **IT IS FURTHER ORDERED** that Part 76 of the Commission’s Rules **IS AMENDED** as set forth in Appendix B and such rule amendments will become effective 30 days after publication in the Federal Register.

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<sup>31</sup> Letter from Michael Nilsson, Counsel to the Nielsen Company (US) LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-239 (filed Oct. 13, 2022). See also Letter from Margaret Miller, Counsel to APTS and PBS, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-239 (filed Nov. 4, 2022) (“acknowledg[ing] Nielsen’s commitment in the record, going forward, to provide stations with information about their DMA assignments ‘upon request and free of charge.’”).

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

<sup>33</sup> *Id.* at 3; see also generally Letter from Michael Nilsson, Counsel to the Nielsen Company (US) LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-239 (filed Sept. 9, 2022) (describing ex parte meetings between David Kenny, CEO of Nielsen, and Commissioners Carr and Simington).

<sup>34</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601, *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>35</sup> *NPRM* at Appx. B.

<sup>36</sup> See 5 U.S.C. § 604.

12. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

13. **IT IS FURTHER ORDERED**, that pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of this Report and Order to Congress and to the Government Accountability Office.

14. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-239 **SHALL BE TERMINATED** and its docket **CLOSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**

**List of Commenters**

Commenters

Commonwealth of Massachusetts  
The Nielsen Company (US) LLC  
National Association of Broadcasters  
NCTA – The Internet & Television Association  
DIRECTV, LLC

Reply Commenters

The Nielsen Company (US) LLC  
ABC Television Affiliates Association, CBS Television Network Affiliates, FBC Television Affiliates  
Association, and NBC Television Affiliates  
America's Public Television Stations and the Public Broadcasting Service

## APPENDIX B

## FINAL RULES

## PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.55 is amended by revising paragraph (e)(2) and replacing paragraph (e)(2)(i), as follows, and eliminating paragraph (e)(2)(ii):

**§ 76.55 Definitions applicable to the must-carry rules.**

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(e) \*\*\*

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(2) ~~Effective January 1, 2000, a~~ A commercial broadcast station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen **Local TV Station Information Report Station Index Directory** and Nielsen ~~Station Index US Television Household Estimates~~ or any successor publications.

(i) **The applicable DMA list for the 2023 election pursuant to § 76.64(f) will be the DMA assignments specified in the Nielsen October 2021 Local TV Station Information Report, and so forth using the publications for the October two years prior to each triennial election pursuant to § 76.64(f).** ~~For the 1999 election pursuant to § 76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997-98 Nielsen Station Index Directory and September 1997 Nielsen Station Index US Television Household Estimates, available from Nielsen Media Research, 770 Broadway, New York, NY, shall be used.~~

(ii) ~~The applicable DMA list for the 2002 election pursuant to § 76.64(f) will be the DMA assignments specified in the 2000-2001 list, and so forth for each triennial election pursuant to § 76.64(f).~~

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3. Section 76.66 is amended by revising paragraph (e)(2) as follows:

**§ 76.66 Satellite broadcast signal carriage.**

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(e) \*\*\*

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates, **the October 2021 Nielsen Local TV Station Information Report**, or any successor publication. In the case of areas outside of any designated market area, any census area,

borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.

(3) A satellite carrier shall use the **October 2021 Nielsen Local TV Station Information Report** ~~1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-mandatory carriage election cycle commencing on January 1, 2024~~<sup>02</sup> and ending on December 31, 2027<sup>05</sup>. The **October 2024 Nielsen Local TV Station Information Report** ~~2003-2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates~~ shall be used for the ~~second~~ retransmission consent-mandatory carriage election cycle commencing January 1, 2028<sup>06</sup> and ending December 31, 2030<sup>08</sup>, and so forth **using the publications for the October two years prior to** each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999-2000 Nielsen Station Index Directory or any subsequent issue of that publication, **or the Local TV Station Information Report commencing with October 2021, and every three years thereafter (i.e., October 2024, October 2027, etc.)**. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

## APPENDIX C

## Final Regulatory Flexibility Act Analysis

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

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

This *Report and Order* adopts several rule changes to update our rules to reflect a change in the Nielsen Company (US) LLC publication used to determinate a stations designated market area (DMA) for satellite and cable carriage under the Commission's regulations. We amend our rules to replace the reference to the annual Nielsen Station Index Directory (Annual Station Index) and United States Television Household Estimates (Household Estimates) with a reference to the Local TV Station Information Report (Local TV Report).<sup>4</sup> We amend our rules to specify the use of the October Local TV Report two years prior to each triennial carriage election to determine a station's DMA.<sup>5</sup>

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

2. There were no comments filed in response to the IRFA.

**C. Response to comments by the Chief Counsel for Advocacy of the Small Business Administration**

3. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, 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.<sup>6</sup>

4. The Chief Counsel did not comment in response to the proposed rules in this proceeding.

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

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>7</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>8</sup> In addition, the term "small business" has the

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, was 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).

<sup>2</sup> *Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage*, MB Docket No. 22-239, Notice of Proposed Rulemaking (NPRM), 2022 WL 2805874, FCC No. 22-55, (rel. July 14, 2022) (NPRM).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> NPRM at 2022 WL 2805874 at \*1.

<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. § 604(a)(3).

<sup>7</sup> 5 U.S.C. § 603(b)(3).

<sup>8</sup> 5 U.S.C. § 601(6).

same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> 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.<sup>10</sup> Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.<sup>11</sup> 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.<sup>12</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>13</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>14</sup>

7. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>15</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>16</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>17</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.<sup>18</sup> Of these providers, the Commission estimates that 4,737

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<sup>9</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>10</sup> 15 U.S.C. § 632.

<sup>11</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

<sup>15</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>16</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>17</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>18</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

providers have 1,500 or fewer employees.<sup>19</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

8. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>20</sup> Based on industry data, there are about 420 cable companies in the U.S.<sup>21</sup> Of these, only five have more than 400,000 subscribers.<sup>22</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>23</sup> Based on industry data, there are about 4,139 cable systems (headends) in the U.S.<sup>24</sup> Of these, about 639 have more than 15,000 subscribers.<sup>25</sup> Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

9. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>26</sup> For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.<sup>27</sup> Based on industry data, only four cable system operators have more than 677,000 subscribers.<sup>28</sup> Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>29</sup> Therefore, we are unable at this time to estimate with greater precision the number of cable

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<sup>19</sup> *Id.*

<sup>20</sup> 47 CFR § 76.901(d).

<sup>21</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>22</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>23</sup> 47 C.F.R. § 76.901(c).

<sup>24</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>25</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>26</sup> 47 U.S.C. § 543(m)(2).

<sup>27</sup> *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to be approximately 48.6 million. See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN*, the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. See 47 CFR § 76.901(e)(1).

<sup>28</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>29</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

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 is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.<sup>30</sup> Transmission facilities may be based on a single technology or combination of technologies.<sup>31</sup> 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.<sup>32</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>33</sup>

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>34</sup> U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.<sup>35</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>36</sup> Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.<sup>37</sup> DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

12. *Open Video Services.* The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is “Wired

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<sup>30</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

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

<sup>32</sup> See *id.* Included in this industry are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

<sup>33</sup> *Id.*

<sup>34</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>35</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>36</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>37</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

Telecommunications Carriers.”<sup>38</sup> The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.<sup>39</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>40</sup> Of this total, 2,964 firms operated with fewer than 250 employees.<sup>41</sup> Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

13. *Wireless Cable Systems – Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS)<sup>42</sup> and Educational Broadband Service (EBS)<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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

<sup>38</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>39</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>40</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>41</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>42</sup> 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*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>43</sup> EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See *id.*

<sup>44</sup> 47 CFR § 27.1213(a).

<sup>45</sup> 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.

<sup>46</sup> *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).

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.<sup>47</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>48</sup> 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.

14. 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 in paragraph 6, *supra*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>49</sup> Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.<sup>50</sup> Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's internal records indicate that as of August 2021, there are 2,451 active EBS licenses.<sup>51</sup> The Commission estimates that of these 2,451 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.<sup>52</sup>

15. *Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers<sup>53</sup> is the closest industry with a SBA small business size standard.<sup>54</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>55</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>56</sup>

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<sup>47</sup> *Id.* at 8296.

<sup>48</sup> *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).

<sup>49</sup> 13 CFR § 121.201, NAICS Code 517311.

<sup>50</sup> United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPFIEM (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM> (last visited Aug. 9, 2021)..

<sup>51</sup> FCC, *Universal Licensing System*, <https://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp> (under "Advanced License Search" option, select "ED - Educational Broadband Service," "Active" and "Regular" License, and "Exclude Leases" to see search results).

<sup>52</sup> 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).

<sup>53</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>54</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>55</sup> *Id.*

<sup>56</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

Of this number, 2,964 firms operated with fewer than 250 employees.<sup>57</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.<sup>58</sup> Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.<sup>59</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

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 size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.<sup>60</sup> Wired Telecommunications Carriers<sup>61</sup> is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>62</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>63</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>64</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.<sup>65</sup> Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.<sup>66</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."<sup>67</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>68</sup> These

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<sup>57</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>58</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>59</sup> *Id.*

<sup>60</sup> Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>61</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>62</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>63</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>64</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>65</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>66</sup> *Id.*

<sup>67</sup> See U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

<sup>68</sup> *Id.*

establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.<sup>69</sup> 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.<sup>70</sup> Of that number, 657 firms had revenue of less than \$25,000,000.<sup>71</sup> Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

18. The Commission estimates that as of March 2022, there were 1,373 licensed commercial television stations.<sup>72</sup> Of this total, 1,280 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,840 LPTV stations and 3,231 TV translator stations.<sup>73</sup> The Commission however does not compile, and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

19. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations<sup>74</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

20. There are also 386 Class A stations.<sup>75</sup> Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,985 LPTV stations and 3,306 TV translator stations.<sup>76</sup> Given the nature

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<sup>69</sup> See 13 CFR § 121.201, NAICS Code 515120.

<sup>70</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>71</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>72</sup> Broadcast Station Totals as of March 31, 2022, Public Notice, DA 22-365 (rel. April 5, 2022) (*March 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-march-31-2022>.

<sup>73</sup> *Id.*

<sup>74</sup> "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR § 121.103(a)(1).

<sup>75</sup> *Supra* note 60 (discussing broadcast station totals as of March 31, 2021).

<sup>76</sup> *Id.*

of these services as secondary and in some cases purely a “fill-in” service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

**E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements**

21. This Report and Order amends our rules to codify the fact that Nielsen Media Research no longer publishes the Annual Station Index and has replaced it with the Local TV Report. Parties will be required to reference this commercial publication to determine DMA assignments for stations involved in the carriage election process.

**F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>77</sup>

23. These rules will not impose a negative economic impact on any small entities because they impose no additional obligations on any entities. Commission regulations currently require that the Annual Station Index and Household Estimates “or its successor publication” be used for the purpose of determining a local broadcast station’s DMA. Given that the Annual Station Index will no longer be published by Nielsen, these rule revisions simply identify the “successor publication” parties are already required to consult as the Local TV Report. The record indicates that the relevant information in the Local TV Report is the same as that previously contained in the Annual Station Index, so the process of accessing the information will not be any more burdensome. The rules therefore will not result in any substantive change in the existing requirements for small entities.

**G. Report to Congress**

24. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>78</sup> In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

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<sup>77</sup> 5 U.S.C. § 603(c)(1)–(4).

<sup>78</sup> 5 U.S.C. § 801(a)(1)(A).

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage*, MB Docket No. 22-239, Report and Order (November 17, 2022).

It is a good time to be a viewer. Watching what you want, when you want it has never been easier. But with so much video content out there, broadcast television still plays an important part in our evolving media landscape. That's because it is uniquely local, anchored in a signal that serves a community and provides its viewers with a special mix of real-time local news, information, and entertainment.

Of course, broadcast stations have changed as viewers and their expectations have evolved. For starters, they are no longer limited to reaching viewers over the air. Today, most viewers of local broadcast television watch through a cable or satellite system. Getting on the channel line-up of these systems now often takes place through retransmission consent negotiation. As part of this negotiation process, cable and satellite systems have long used Nielsen's Annual Station Index Directory to help determine each station's local market for carriage purposes.

Now that publication of this directory has ceased, we need to make sure that a successor is put in place. To do so, earlier this year we started a rulemaking to determine just what that successor should be and today we are concluding this effort with a determination that Nielsen's Local TV Report meets the requirements under our rules and the law. After reviewing the record, we are confident that this new report contains what is necessary to determine the local market for each full-power television station. It will continue to make it possible for broadcasters to serve their communities with the local news, information, and entertainment they need.

Thank you to the staff who worked on this effort, including Ken Lewis, Lyle Elder, Maria Mullarkey, and Nancy Murphy from the Media Bureau; Kim Makuch, Mark Montano, and Andrew Wise from the Office of Economics and Analytics; and Susan Aaron, David Konczal, and William Richardson from the Office of General Counsel.