

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

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

SECOND REPORT AND ORDER

Adopted: October 17, 2023

Released: October 17, 2023

By the Commission:

I. INTRODUCTION

1. In this Second Report and Order (Order), we expand our audio description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year until all DMAs are included. Such an expansion will help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming. Consistent with the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), we find that the costs of expanding the audio description regulations to DMAs 101 through 210 are reasonable for program owners, providers, and distributors. No commenters oppose this action.

II. BACKGROUND

2. Audio description makes video programming more accessible to individuals who are blind or visually impaired through the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue. To access audio description, consumers generally switch from the main program audio to the secondary audio stream on which audio description is typically provided. In 2011, pursuant to section 202 of the CVAA, the Commission adopted rules requiring certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming that they offer to consumers. The current audio description rules require certain commercial television broadcast stations to provide 50 hours of audio-described programming per calendar quarter during prime time or on children's programming, as well as an additional 37.5 hours of audio-described programming per calendar quarter at any time between 6 a.m. and 11:59 p.m. The commercial television broadcast

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

2 "Video programming" refers to programming provided by, or generally considered comparable to programming provided by, a television broadcast station but does not include consumer-generated media. 47 U.S.C. § 613(h)(2); 47 CFR § 79.3(a)(4).

3 47 CFR § 79.3(a)(3).

4 Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-43, Report and Order, 26 FCC Rcd 11847 (2011) (2011 Audio Description Order). See also 47 CFR § 79.3. In accordance with the CVAA, the 2011 Audio Description Order reinstated with certain modifications the Commission's audio description rules that the United States Court of Appeals for the District of Columbia Circuit previously vacated due to its finding that the Commission had insufficient authority for its rules. See Motion Picture Ass'n of America, Inc. v. Federal Communications Comm., 309 F.3d 796 (D.C. Cir. 2002).

5 47 CFR § 79.3(b)(1). The rules also require television broadcast stations that are affiliated or otherwise associated with any television network to pass through audio description when the network provides audio

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stations that are subject to this requirement are those that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top television markets.<sup>6</sup>

3. The *2011 Audio Description Order* applied the audio description requirements to certain television broadcast stations in DMAs 1 through 60.<sup>7</sup> Pursuant to the requirements of the CVAA, the Commission submitted a report to Congress (the Second Report) to assess, among other topics, “the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [audio-described] programming” and “the need for additional described programming in [DMAs] outside the top 60.”<sup>8</sup> The Media Bureau submitted the Second Report to Congress in October 2019, describing the consumer desire for application of the audio description rules outside the top 60 DMAs but stating that commenters did not offer “detailed or conclusive information” as to the costs of such an expansion or a station’s ability to bear those costs.<sup>9</sup> It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable, explaining that, “[s]hould the Commission seek to expand the [audio] description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine that ‘the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable.’”<sup>10</sup>

4. The CVAA provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year,” “based upon the findings, conclusions, and recommendations contained in the [Second Report],” “(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”<sup>11</sup> Exercising this authority, the Commission adopted a phased expansion of the audio description rules, finding that the costs of the expansion to

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

<sup>6</sup> *Id.* § 79.3(b)(1).

<sup>7</sup> *2011 Audio Description Order*, 26 FCC Rcd at 11855-56, para. 16 (“The rules extend the requirement . . . to major network affiliates in the 60 largest markets beginning on July 1, 2015.”).

<sup>8</sup> 47 U.S.C. § 613(f)(4)(C)(iii)(IV), (VII). In the *2020 Audio Description Order*, the Commission modernized the terminology in its rules by replacing the term “video description” with the “more common and widely understood” term “audio description.” *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 35 FCC Rcd 12577, 12584-86, paras. 14-15 (2020) (*2020 Audio Description Order*). When discussing items that use the prior terminology, we have updated the terminology accordingly.

<sup>9</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Second Report to Congress, 34 FCC Rcd 9350, 9362-63, paras. 26-28 (MB 2019) (Second Report). See also *id.* at 9361, paras. 23-24 (indicating that the maximum cost of creating audio-described programming remains consistent with the Commission’s 2017 estimate of \$4,202.50 per hour, while the cost of adding description to pre-recorded programming can be as low as \$1,000 per hour).

<sup>10</sup> *Id.* at 9363, para. 28 (quoting 47 U.S.C. § 613(f)(4)(C)(iv)(I)).

<sup>11</sup> 47 U.S.C. § 613(f)(4)(C)(iv).

DMAs 61 through 100 are reasonable for program owners, providers, and distributors.<sup>12</sup> The audio description requirements extended to DMAs 61 through 70 on January 1, 2021, to DMAs 71 through 80 on January 1, 2022, and to DMAs 81 through 90 on January 1, 2023.<sup>13</sup> The requirements will extend to DMAs 91 through 100 on January 1, 2024.<sup>14</sup> Thus far, the timetable for the phased expansion has been successful, with no requests for relief under either the rule governing exemptions due to economic burden or the more general waiver rule.<sup>15</sup>

5. The *2020 Audio Description Order* also indicated that the Commission would consider in 2023 whether to continue expanding the audio description requirements to an additional 10 DMAs per year, after assessing the reasonableness of the associated costs.<sup>16</sup> The Commission explained that deferring a determination on the application of the audio description rules beyond DMA 100 “will best enable us to consider the unique circumstances that may be applicable” to the smallest markets, and provides “the additional benefit of . . . any additional information gleaned from [the] practical experience” of expansion beyond DMA 60.<sup>17</sup> To foster this determination, in March 2023 the Commission proposed to continue expanding the audio description requirements through a phased schedule applicable to DMAs 101 through 210.<sup>18</sup> The *2023 Audio Description FNPRM* elicited four comments and two replies,<sup>19</sup> all of which supported the Commission’s proposal.

### III. DISCUSSION

6. We adopt the proposal contained in the *2023 Audio Description FNPRM* to continue phasing in the audio description requirements for an additional 10 DMAs each year until all 210 DMAs are covered.<sup>20</sup> Commenters unanimously support the expansion of the Commission’s audio description rules to all remaining DMAs.<sup>21</sup> As stated above, the CVAA provides the Commission with authority for this phase-in, “based upon the findings, conclusions, and recommendations contained in the [Second Report],” “(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission;

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<sup>12</sup> *2020 Audio Description Order*, 35 FCC Rcd 12577. The Commission’s audio description rules define a “video programming distributor” as “[a]ny television broadcast station licensed by the Commission and any [MVPD], and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.” 47 CFR § 79.3(a)(5). The rules also define a “video programming provider” as “[a]ny video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming.” *Id.* § 79.3(a)(2). The Commission’s audio description rules do not separately define the term “owner.”

<sup>13</sup> *Id.* § 79.3(b)(1).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* §§ 79.3(d), 1.3.

<sup>16</sup> *2020 Audio Description Order*, 35 FCC Rcd at 12584, para. 13.

<sup>17</sup> *Id.*

<sup>18</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Further Notice of Proposed Rulemaking, FCC 23-20 (2023) (*2023 Audio Description FNPRM*).

<sup>19</sup> The commenters were: ACA Connects – America’s Communications Association (ACA); American Council of the Blind (ACB); American Foundation for the Blind (AFB); and a consumer, Renee Arrington-Johnson. The reply commenters were the National Association of Broadcasters (NAB) and a consumer, Arona Rosegold.

<sup>20</sup> *2023 Audio Description FNPRM*, para. 7.

<sup>21</sup> See, e.g., ACA Connects Comments at 1; ACB Comments at 1-2; AFB Comments at 1; Arrington-Johnson Comments; NAB Reply at 1 (indicating that NAB “does not object to the Commission’s proposal to expand coverage of the audio description rules to network affiliate television stations nationwide”).

and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”<sup>22</sup>

7. The record demonstrates that the costs of implementing the audio description regulations in markets 101 through 210 are reasonable.<sup>23</sup> Commenters did not specify the current costs of adding description to television programming. However, the Commission previously found that such costs held steady between 2017 and 2019, indicating that they were at a level the Commission previously deemed “minimal,” and no commenter reported that costs have increased or objected to the proposal on the basis that it would impose an unreasonable cost.<sup>24</sup> We expect that the costs of extending the audio description requirements to all remaining market areas should be minimal. This is because covered broadcasters already are required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size.<sup>25</sup> Further, network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed,<sup>26</sup> which will mitigate any costs associated with the rule expansion.<sup>27</sup> For all of these reasons, we conclude that the costs of expanding the audio description regulations to DMAs 101 through 210 are reasonable. To the extent a broadcaster finds itself in an unusual situation that makes the costs of compliance unreasonable, it may avail itself of the exemption procedures discussed below.<sup>28</sup> However, based on our expertise and the record compiled in this proceeding, we expect such instances to be exceedingly rare.

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<sup>22</sup> 47 U.S.C. § 613(f)(4)(C)(iv).

<sup>23</sup> *2023 Audio Description FNPRM*, paras. 7, 9; ACB Comments at 2 (“Because the technology necessary to transmit audio description is already in place, cost cannot be a significant factor in the DMA expansion.”); AFB Comments at 4 (“The Commission’s proposed rule should have minimal impact on entities . . .”). *See also infra* para. 11 and n.51 (discussing the reasonableness of the pass-through requirement for MVPDs).

<sup>24</sup> *See* Second Report, 34 FCC Rcd at 9361, paras. 23, 24 (indicating that the maximum cost of creating audio-described programming remained consistent with the Commission’s 2017 estimate of \$4,202.50 per hour, while the cost of adding description to pre-recorded programming could be as low as \$1,000 per hour); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report and Order, 32 FCC Rcd 5962, 5966, para. 9 (2017).

<sup>25</sup> *See* 47 CFR § 79.2(b)(2)(ii) (requiring video programming distributors or video programming providers that create visual emergency information content and add it to the programming stream to provide an aural representation of the information on a secondary audio stream, and requiring video programming distributors to ensure that the aural representation of emergency information gets passed through to consumers); ACB Comments at 2 (“In rare cases a broadcaster might have requested and been granted an exemption from accessible emergency information requirements, but broadcasters that are not exempt should have no financial or technical reason not to enable the audio description stream.”).

<sup>26</sup> 47 CFR § 79.3(b)(3) (requiring network affiliated stations, including those outside the top 60 DMAs, to “pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description”); *2011 Audio Description Order*, 26 FCC Rcd at 11850, para. 4 (noting that the pass-through requirement applies to any network-affiliated broadcast station, “regardless of its market size,” provided that the technical requirements are satisfied); Second Report, 34 FCC Rcd at 9362, para. 27.

<sup>27</sup> In addition, as stated in the *2020 Audio Description Order*, the Media Bureau’s first report to Congress on audio description “concluded that the costs of complying with the audio description requirements were consistent with industry’s expectations at the time the rules were adopted and had not impeded industry’s ability to comply, and the record for the Second Report did not alter that conclusion.” *See 2020 Audio Description Order*, 35 FCC Rcd at 12581, n.29 (citing *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Report to Congress, 29 FCC Rcd 8011, 8032, para. 49 (MB 2014) (First Report)).

<sup>28</sup> *See infra* para. 11. As with the 2020 expansion, comments on the *2023 Audio Description FNPRM* did not

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8. The significant benefits of expanding the audio description requirements to DMAs 101 through 210, when weighed against the minimal costs, further support expansion to these markets.<sup>29</sup> The Second Report indicated that consumers desired an expansion of the audio description requirements outside the top 60 DMAs,<sup>30</sup> and we believe that consumers will benefit from an expansion even in the smallest DMAs.<sup>31</sup> In fact, there may be even greater benefits to applying the audio description rules to smaller DMAs, given AFB's assertion that "there is evidence that less urbanized communities experience higher rates of disability, including blindness."<sup>32</sup> AFB explains that the expansion should also benefit video programming providers, whose programming and advertising will reach additional consumers.<sup>33</sup> When the Commission previously expanded the audio description requirements to DMAs 61 through 100, the record indicated there would also be benefits for consumers who are not blind or visually impaired, such as consumers with other sensory or cognitive impairments, individuals learning the language, and those who listen to video programming while multitasking.<sup>34</sup> We believe the same would be true with regard to expanding to DMAs 101 through 210. Although commenters did not provide specific data on the amount of audio-described programming currently available in DMAs 101 through 210 – including comparing that data to the amount that would be available if the Commission were to expand the audio description requirements to such DMAs<sup>35</sup> – it is clear that expanding the audio description requirements to these additional markets will benefit a significant number of consumers.<sup>36</sup>

9. We adopt the proposal in *2023 Audio Description FNPRM* to continue the phase-in with DMAs 101 through 110 on January 1, 2025, extending to 10 additional DMAs per year until the phase-in concludes with DMAs 201 through 210 on January 1, 2035, consistent with the expansion allowable

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provide detailed analysis of the current costs of audio description, or the costs that entities in the additional DMAs might face as a result of the proposed expansion. Nonetheless, as explained herein, we believe that like 2020, the current record provides sufficient information to determine, as required under the CVAA, that the costs of implementing the audio description regulations to program owners, providers, and distributors in the additional markets are "reasonable." We note that commenters did not provide any information that undermines our conclusion regarding the reasonableness of costs. See *2023 Audio Description FNPRM*, paras. 9-10 (seeking comment on a variety of issues related to the costs of the proposed expansion, including a request for "figures demonstrating the estimated costs of complying with the audio description regulations for program owners, providers, and distributors in DMAs 101 through 210").

<sup>29</sup> See *2023 Audio Description FNPRM*, para. 8.

<sup>30</sup> See Second Report, 34 FCC Rcd at 9357-58, 9362, paras. 15, 26; *Audio Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Notice of Proposed Rulemaking, 35 FCC Rcd 4293, 4298, para. 12 (2020) (stating that it is "indisputable that [audio] description enhances the accessibility of video programming to consumers who are blind or visually impaired"). See also Second Report, 34 FCC Rcd at 9363, para. 28 (observing that the record informing the Second Report "indicates that consumers seek expansion of the [audio] description requirements to DMAs outside the top 60, and it provides no basis for concluding that consumers would benefit less from [audio] description in those markets than in other areas").

<sup>31</sup> See, e.g., ACB Comments at 3 ("From family fun to educational opportunity, digital accessibility and audio description contribute to the formation and maintenance of equitable, inclusive, and resilient communities."); AFB Comments at 1 ("Audio description benefits consumers regardless of where they live and may be even more beneficial in smaller communities.").

<sup>32</sup> AFB Comments at 2 (footnote omitted).

<sup>33</sup> *Id.* at 3.

<sup>34</sup> See *2020 Audio Description Order*, 35 FCC Rcd at 12581-82, para. 9.

<sup>35</sup> *2023 Audio Description FNPRM*, para. 8.

<sup>36</sup> See, e.g., ACB Comments at 2; NAB Reply at 1 ("We agree with the Commission's goal of improving the accessibility of televised programming for a greater number of individuals who are blind or visually impaired . . .").

under the CVAA.<sup>37</sup> The Commission sought comment on whether it should consider phasing in the audio description requirements to a smaller subset of DMAs, or to a smaller number of DMAs per year.<sup>38</sup> ACB explains that adopting an even slower expansion “would increase the equity gap experienced by residents of smaller communities, which are often rural and/or at an economic disadvantage.”<sup>39</sup> The record does not contain any support for a slower phase-in, and thus we adopt the proposed timeline contained in the *2023 Audio Description FNPRM*, which we expect will provide covered broadcasters with ample time to comply.

10. We also adopt the proposal contained in the *2023 Audio Description FNPRM* to base the extension to additional DMAs on an updated Nielsen determination of market rankings.<sup>40</sup> We find that using updated Nielsen data will facilitate the efficient roll out of audio description obligations to all remaining DMAs, and will be consistent with the Commission’s prior expansion of the rules from the top 25 markets to the top 60 markets and from the top 60 markets to the top 100 markets.<sup>41</sup> The audio description rules currently utilize DMA rankings “as determined by The Nielsen Company as of January 1, 2020.”<sup>42</sup> The revised rules, as set forth in Appendix A, will utilize DMA rankings “as determined by The Nielsen Company as of January 1, 2023.” Under existing rules, the audio description requirements apply to the top 90 DMAs as of January 1, 2023, and they will next extend to DMAs 91 through 100 on January 1, 2024.<sup>43</sup> We note that utilizing updated Nielsen market rankings will affect two DMAs that are in the top 90 DMAs utilizing the Nielsen figures as of January 1, 2020, that will fall within the later deadline for DMAs 91 through 100 utilizing the Nielsen figures as of January 1, 2023.<sup>44</sup> Conversely, there are two DMAs that are within the later deadline for DMAs 91 through 100 utilizing the Nielsen figures as of January 1, 2020, that will fall within the earlier deadline for DMAs 81 through 90 utilizing the Nielsen figures as of January 1, 2023.<sup>45</sup> ACB is the only commenter that addresses application of updated Nielsen figures, and it indicates that it “feels strongly that regardless of the most recent data, once audio description has been required of a DMA, that mandate should not change, even if the market’s ranking does.”<sup>46</sup> To avoid any consumer confusion, and given that ACB’s request is unopposed, we find that stations that are currently subject to the deadline for DMAs 81 through 90 (January 1, 2023), but will

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<sup>37</sup> See *2023 Audio Description FNPRM*, para. 13; ACB Comments at 2. The CVAA does not permit the Commission to expand the audio description requirements to more than an additional 10 DMAs per year. See Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv); AFB Comments at 3 (“[W]e acknowledge the Commission’s statutory limitations . . .”). We recognize, however, ACB and AFB’s assertions that to the extent broadcasters voluntarily pass through audio description at an earlier date, doing so would benefit consumers. See ACB Comments at 2; AFB Comments at 3-4. NAB has responded that it “will heed the disability community’s requests to encourage television stations in markets outside the top 100 DMAs to implement audio description earlier than the FCC may require in accordance with the CVAA.” NAB Reply at 2. Accordingly, while we adopt the phase-in schedule as proposed and consistent with the CVAA, we encourage television stations in markets outside the top 100 DMAs to implement audio description earlier to the extent they are able to do so.

<sup>38</sup> See *2023 Audio Description FNPRM*, para. 11.

<sup>39</sup> ACB Comments at 2.

<sup>40</sup> See *2023 Audio Description FNPRM*, para. 14; ACB Comments at 3.

<sup>41</sup> *2011 Audio Description Order*, 26 FCC Rcd at 11856, para. 16; *2020 Audio Description Order*, 35 FCC Rcd at 12583, para. 11.

<sup>42</sup> 47 CFR § 79.3(b)(1).

<sup>43</sup> *Id.*

<sup>44</sup> The two DMAs are (1) Paducah-Cape Girardeau-Harrisburg (moved from DMA 84 to DMA 92) and (2) Cedar Rapids-Waterloo-Iowa City and Dubuque (moved from DMA 90 to DMA 93).

<sup>45</sup> The two DMAs are (1) Chattanooga (moved from DMA 92 to DMA 84) and (2) Charleston, SC (moved from DMA 91 to DMA 88).

<sup>46</sup> ACB Comments at 3.

become subject to the deadline for DMAs 91 through 100 (January 1, 2024) once the new rule takes effect, must continue complying with the audio description requirements during any gap between the effective date of the new rules and the January 1, 2024 application of the rules to DMAs 91 through 100.<sup>47</sup> In other words, stations that are already subject to the rules should continue their provision of this service, regardless of a change in their DMA status, in order to prevent disruption during the gap period to consumers who have come to rely on audio description. Consistent with the approach in the *2020 Audio Description Order*, we expect stations in a DMA that was not in the top 90 markets as of January 1, 2020, but is in the top 90 markets as of January 1, 2023, to come into compliance with the audio description rules by the compliance deadline for DMAs 91 through 100.<sup>48</sup>

11. Finally, we affirm the tentative conclusion in the *2023 Audio Description FNPRM* that “sections 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the audio description rules to additional DMAs.”<sup>49</sup> ACA Connects states that its support for the proposed expansion of the audio description requirements is conditioned upon the Commission adopting its proposals regarding exemption petitions and waivers.<sup>50</sup> According to ACA Connects, “the costs of compliance with the audio description rules may be most difficult to absorb by small MVPDs and/or MVPDs operating in the smallest market areas,” and thus, such entities may need relief in the form of either an exemption due to economic burden or a waiver for a different reason.<sup>51</sup> We find that the existing exemption and waiver procedures will be sufficient to address this concern. Specifically, section 79.3 of

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<sup>47</sup> We find that this approach is necessary here, whereas it was not utilized in the *2020 Audio Description Order*, because of the earlier timing of the adoption of this Order (October 17, 2023 as compared to October 27, 2020), pursuant to which there may be a slightly longer time period between the effective date of the new rules and the next compliance deadline of January 1, 2024. See *2020 Audio Description Order*, 35 FCC Rcd at 12583, n.43.

<sup>48</sup> *Id.* at 12583, para. 11. We note that this January 1, 2024 compliance deadline is the date on which such stations already would have expected to become subject to the requirements, had we not adopted the use of updated Nielsen figures, so there should be no difficulty with complying.

<sup>49</sup> See *2023 Audio Description FNPRM*, para. 15.

<sup>50</sup> ACA Connects Comments at 1-2.

<sup>51</sup> *Id.* at 3-4. While today we expand the number of broadcasters subject to the audio description requirements, we recognize that our action also impacts MVPDs, given that MVPDs of any size “[m]ust pass through audio description on each broadcast station they carry, when the broadcast station provides audio description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.” 47 CFR § 79.3(b)(5)(i). We find that the costs of the expansion for impacted MVPDs are reasonable. MVPDs in the expanded markets that serve 50,000 or more subscribers are already subject to the separate audio description requirements that apply directly to MVPDs. See *id.* § 79.3(b)(4); *supra* n. 5. We expect that even small MVPDs in small markets already have the capability to provide audio description via a secondary audio stream, because video programming distributors and providers already are required to have the equipment and infrastructure necessary to deliver a secondary audio stream for purposes of the emergency information requirements, without exception for technical capability or market size. See *id.* § 79.2(b)(2). ACA Connects states that there are “some practical limitations” even where the audio description rules already apply, including “the amount of programming encoded with audio description” and “the availability of a secondary audio programming (SAP) channel to carry the audio description.” See ACA Connects Comments at 2-3. ACA Connects acknowledges that MVPDs are making progress in this area “as they replace legacy equipment and as the industry finds new solutions to facilitate distribution of multiple audio streams.” See *id.* at 3. In the rare instance that an MVPD in the expanded markets finds that it is unable to comply with the requirements by the time the relevant market is subject to the applicable phased compliance deadline, we agree with ACA Connects that the existing exemption and waiver procedures will suffice. See ACA Connects Comments at 4 (predicting that, given that there have been no requests for relief under either section 79.3(d) or section 1.3 resulting from the expansion to DMAs 61 through 100, a further expansion “should not be tantamount to opening the door to exceptions that will swallow the rules”).

the Commission's rules governs petitions for exemption due to economic burden,<sup>52</sup> and section 1.3 governs waivers of the Commission's rules generally.<sup>53</sup> Under section 79.3(d), a video programming provider<sup>54</sup> may petition the Commission for a full or partial exemption from the audio description requirements upon a showing that they are economically burdensome.<sup>55</sup> The CVAA provides that if an expansion of the audio description rules to additional DMAs occurs, "the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate."<sup>56</sup> While section 79.3(d) applies to instances in which an entity seeks to demonstrate that the extension to additional DMAs is economically burdensome, the CVAA specifically references *wavers* as a means of relief, which differs from the *exemptions* available under section 79.3(d). Hence, if an entity impacted by the extension believes it needs relief for some reason other than economic burden, it may seek a waiver under section 1.3.<sup>57</sup>

#### IV. PROCEDURAL MATTERS

12. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>58</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>59</sup> Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Order on small entities. The FRFA is set forth in Appendix B.

13. *Paperwork Reduction Act.* The Second Report and Order does not contain new or substantively revised information collection requirements subject to the Paperwork Reduction Act of

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<sup>52</sup> 47 CFR § 79.3(d); *2023 Audio Description FNPRM*, para. 15.

<sup>53</sup> 47 CFR § 1.3 ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

<sup>54</sup> The term "video programming provider" includes MVPDs. *See supra* n. 12.

<sup>55</sup> 47 CFR § 79.3(d). The term "economically burdensome" means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for audio description would be economically burdensome: (i) the nature and cost of providing audio description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. *Id.* §§ 79.3(d)(2)(i)-(iv). In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the audio description requirements, and it evaluates economic burden with regard to the individual outlet. *Id.* § 79.3(d)(3). In the First Report, the Bureau stated its belief "that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015." First Report, 29 FCC Rcd at 8033, para. 49. We support this finding.

<sup>56</sup> 47 U.S.C. § 613(f)(4)(C)(iv)(II).

<sup>57</sup> We note that commenters raise additional issues that are outside the scope of this Order and thus not addressed here. Such proposals include the availability of customer service agents with knowledge of audio description, the idea of "encourag[ing] entities to support the success of the expansion by informing viewers of the new availability of audio description and how to access it," and a requested increase in the amount of audio-described content. *See* ACB Comments at 3; AFB Comments at 4; Rosegold Reply; *2020 Audio Description Order*, 35 FCC Rcd at 12584, n.52.

<sup>58</sup> 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>59</sup> 5 U.S.C. § 605(b).



1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520).<sup>60</sup> 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(c)(4). This document may contain non-substantive modifications to approved information collection(s). Any such modifications will be submitted to OMB for review pursuant to OMB’s non-substantive modification process.

14. *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).

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

## V. ORDERING CLAUSES

16. 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 contained in section 713 of the Communications Act of 1934, as amended, 47 U.S.C. § 613, this Second Report and Order **IS HEREBY ADOPTED**.

17. **IT IS FURTHER ORDERED** that part 79 of the Commission’s rules, 47 CFR part 79, **IS AMENDED** as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after the date of publication in the Federal Register. The amendments to part 79 may contain non-substantive modifications to information collection requirements that will be submitted to the Office of Management and Budget for approval.

18. **IT IS FURTHER ORDERED** that the Commission’s Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

19. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Second Report and Order 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).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>60</sup> The Commission will file a non-substantive modification to the information collection that contains section 79.3 (OMB 3060-1148) to clarify that the audio description requirements have been extended to DMAs 101 through 210.

## APPENDIX A

## Final Rules

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

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 to read as follows:

## PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

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

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

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

**§ 79.3 Audio description of video programming.**

\* \* \* \* \*

(b) \* \* \*

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top ~~96~~ DMAs, as determined by The Nielsen Company as of January 1, 202~~30~~, must provide 50 hours of audio description per calendar quarter, either during prime time or on children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a previously unaffiliated station in one of these markets becomes affiliated with one of these networks, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized. On January 1, 202~~4~~, and on January 1 each year thereafter until January 1, 202~~35~~, the requirements of this paragraph (b)(1) shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 202~~3~~, **as follows: On January 1, 2024, the requirements shall extend to DMAs 91 through 100; on January 1, 2025, the requirements shall extend to DMAs 101 through 110; on January 1, 2026, the requirements shall extend to DMAs 111 through 120; on January 1, 2027, the requirements shall extend to DMAs 121 through 130; on January 1, 2028, the requirements shall extend to DMAs 131 through 140; on January 1, 2029, the requirements shall extend to DMAs 141 through 150; on January 1, 2030, the requirements shall extend to DMAs 151 through 160; on January 1, 2031, the requirements shall extend to DMAs 161 through 170; on January 1, 2032, the requirements shall extend to DMAs 171 through 180; on January 1, 2033, the requirements shall extend to DMAs 181 through 190; on January 1, 2034, the requirements shall extend to DMAs 191 through 200; and on January 1, 2035, the requirements shall extend to DMAs 201 through 210;** as follows: On January 1, 2021, the requirements shall extend to DMAs 61 through 70; on January 1, 2022, the requirements shall extend to DMAs 71 through 80; on January 1, 2023, the requirements shall extend to DMAs 81 through 90; and on January 1, 2024, the requirements shall extend to DMAs 91 through 100;

\* \* \* \* \*

## APPENDIX B

## 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 *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Further Notice of Proposed Rulemaking (2023 Audio Description FNPRM)* released in March 2023.<sup>2</sup> The Federal Communications Commission (Commission) sought written public comment on the proposals in the *2023 Audio Description FNPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Final Rules**

2. In the *Second Report and Order* (Order), we expand our audio description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year until all DMAs are included. Such an expansion will help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) provides the Commission with authority “to phase in the [audio] description regulations for up to an additional 10 [DMAs] each year,” “based upon the findings, conclusions, and recommendations contained in the [Second Report],” “(I) if the costs of implementing the [audio] description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”<sup>4</sup> Consistent with the requirements of CVAA, we find that the costs of expanding the audio description regulations to DMAs 101 through 210 are reasonable for program owners, providers, and distributors. No commenters oppose this action. We also find that the existing exemption and waiver procedures are sufficient to address concerns regarding cost of compliance for smaller stations and MVPDs and those operating in smaller markets.

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

3. There were no comments filed that specifically responded to the IRFA. There were, however, comments filed that addressed the potential impact of the proposed rules on small entities. Specifically, ACA Connects states that its support for the proposed expansion of the audio description requirements is conditioned upon the Commission adopting its proposals regarding exemption petitions and waivers, because small MVPDs or MVPDs operating in the smallest markets may need relief.<sup>5</sup> As discussed below in sections E and F, we find that existing waiver and exemption procedures sufficiently address these concerns.

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

<sup>2</sup> *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-43, Further Notice of Proposed Rulemaking, FCC 23-20 (2023) (*2023 Audio Description FNPRM*).

<sup>3</sup> 5 U.S.C. § 604.

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

<sup>5</sup> ACA Connects Comments at 3-4 (citing para. 19 of the IRFA as an example of “the Commission’s recognition that the costs of compliance with the audio description rules may be most difficult to absorb by small MVPDs and/or MVPDs operating in the smallest markets”).

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

4. 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> The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

**D. Description and Estimate of the Number of Small Entities To Which the Rules Will 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 rules adopted herein.<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 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>

6. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”<sup>11</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>12</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.<sup>13</sup> 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.<sup>14</sup> Of that number, 657 firms had revenue of less than \$25,000,000.<sup>15</sup> Based on this data we

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<sup>6</sup> 5 U.S.C. § 604(a)(3)

<sup>7</sup> *Id.* § 604 (a)(4).

<sup>8</sup> *Id.* § 601(6).

<sup>9</sup> *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.”

<sup>10</sup> 15 U.S.C. § 632.

<sup>11</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

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

<sup>13</sup> 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

<sup>14</sup> 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>15</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).

estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

7. As of June 30, 2023, there were 1,375 licensed commercial television stations.<sup>16</sup> Of this total, 1,256 stations (or 91.3%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 17, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,902 LPTV stations and 3,123 TV translator stations.<sup>17</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.

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.<sup>18</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>19</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>20</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>21</sup>

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>22</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>23</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>24</sup> Additionally, based on Commission data in the 2022 Universal Service

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<sup>16</sup> *Broadcast Station Totals as of June 30, 2023*, Public Notice, DA 23-582 (rel. July 14, 2023) (*July 2023 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-23-582A1.pdf>.

<sup>17</sup> *Id.*

<sup>18</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>19</sup> *Id.*

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

<sup>21</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>22</sup> 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>23</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

<sup>24</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.

Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.<sup>25</sup> Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.<sup>26</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.<sup>27</sup> The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.<sup>28</sup> The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>29</sup> The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.<sup>30</sup> Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.<sup>31</sup> Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.<sup>32</sup> Based on this data, the Commission estimates that a majority of firms in this industry are small.

11. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its 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>33</sup> Based on industry data, there are about 420 cable companies in the U.S.<sup>34</sup> Of these, only seven have more than 400,000 subscribers.<sup>35</sup> In addition, under the Commission's rules, a "small system" is a cable system serving

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<sup>25</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "515210 Cable and Other Subscription Programming," <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

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

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

<sup>30</sup> 13 CFR § 121.201, *NAICS Code 515210 (as of 10/1/22, NAICS Code 516210)*.

<sup>31</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

<sup>32</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 note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>33</sup> 47 CFR § 76.901(d).

<sup>34</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>35</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

15,000 or fewer subscribers.<sup>36</sup> Based on industry data, there are about 4,139 cable systems (headends) in the U.S.<sup>37</sup> Of these, about 639 have more than 15,000 subscribers.<sup>38</sup> Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

12. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a “small cable operator,” which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>39</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>40</sup> Based on industry data, only six cable system operators have more than 677,000 subscribers.<sup>41</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>42</sup> Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed 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>43</sup> Transmission facilities may be based on a single technology or combination of technologies.<sup>44</sup> Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired

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<sup>36</sup> 47 CFR § 76.901(c).

<sup>37</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>38</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>39</sup> 47 U.S.C. § 543(m)(2).

<sup>40</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 traditional and telco cable operators to be approximately 49.8 million. *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 80, para. 218, Fig. II.E.1. (2022) (2022 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>41</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

<sup>42</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).

<sup>43</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>44</sup> *Id.*

telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services.<sup>45</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>46</sup>

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>47</sup> U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.<sup>48</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>49</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>50</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.

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

15. The rule changes adopted in the Order will affect reporting, recordkeeping, or other compliance requirements. Specifically, the Order will affect compliance requirements for small and other program owners, providers, and distributors by phasing in the existing audio description requirements for an additional 10 DMAs each year, beginning with DMAs 101 through 110 on January 1, 2025 and continuing until all 210 DMAs are covered, which will be on January 1, 2035. The substance of the audio description requirements will not change, but rather, this will be an expansion of the DMAs in which broadcast television stations in those additional markets are required to comply with the requirements. The extension to additional DMAs will be based on an updated Nielsen determination, with the revised rules applying to the relevant DMAs as determined by the Nielsen company as of January 1, 2023. There are two DMAs that are in the top 90 DMAs utilizing the Nielsen figures as of January 1, 2020, that will fall within the later deadline for DMAs 91 through 100 utilizing the Nielsen figures as of January 1, 2023.<sup>51</sup> To avoid any consumer confusion, stations in those DMAs must continue complying with the audio description requirements during any gap between the effective date of the new rules and the January 1, 2024 application of the rules to DMAs 91 through 100.

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<sup>45</sup> *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>46</sup> *Id.*

<sup>47</sup> 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>48</sup> 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>49</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>50</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).

<sup>51</sup> The two DMAs are (1) Paducah-Cape Girardeau-Harrisburg (moved from DMA 84 to DMA 92) and (2) Cedar Rapids-Waterloo-Iowa City and Dubuque (moved from DMA 90 to DMA 93).



16. The record demonstrates that the costs of compliance with the audio description requirements in markets 101 through 210 are reasonable.<sup>52</sup> The Order explains that the Commission previously found that the costs of adding description to television programming held steady between 2017 and 2019, indicating that they were at a level the Commission previously deemed “minimal,” and no commenter reported that costs have increased or objected to the proposal on the basis that it would impose an unreasonable cost. The Commission expects that the costs of extending the audio description requirements to all remaining market areas should be minimal. This is because covered broadcasters already are required to have the equipment and infrastructure needed to deliver a secondary audio stream for purposes of the emergency information requirements. Costs will be further mitigated by the fact that network affiliates in all DMAs are already required to pass through the audio description they receive via a network feed. In addition, the Commission states that the significant benefits of expanding the audio description requirements to DMAs 101 through 210, when weighed against the minimal costs, further support expansion to these markets. Further, with regard to MVPDs, the Commission also finds that the costs of compliance should be reasonable. For small entities and others that may need regulatory relief, section 79.3(d) of the Commission’s rules will continue to govern any petitions for exemption due to economic burden, and section 1.3 of the Commission’s rules will continue to govern waivers of the Commission’s rules generally.

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

17. The RFA requires an agency to provide “a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”<sup>53</sup>

18. The Commission considered alternatives and adopted certain proposals that will minimize the impact of the rules on small entities. First, by continuing the phase-in by extending the requirements to an additional 10 DMAs per year, the Commission will ensure that the smallest DMAs have the longest timeframe for compliance. In the *2023 Audio Description FNPRM*, the Commission sought comment on whether it should phase in a smaller subset of DMAs, and whether the Commission should consider expanding to a smaller number of DMAs each year, such as five. While either such alternate approach could have mitigated the costs of the expansion, no commenter supports the alternate approaches, and one commenter expresses concern that a slower expansion would increase the equity gap that exists in smaller communities.<sup>54</sup> Second, to the extent any entity in DMAs 101 through 210 finds that it is unable to comply with the expansion due to economic burden, it may file a petition for an exemption due to economic burden in accordance with section 79.3(d). Stations and MVPDs, including small entities, that need relief for some reason other than an economic burden may also request a waiver under section 1.3. We conclude that sections 79.3(d) and 1.3 provide a sufficient mechanism for entities, including smaller entities, seeking relief from the expansion of the audio description rules to additional DMAs.

**G. Report to Congress**

19. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>55</sup> In addition, the Commission will send a

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<sup>52</sup> Order at para 7.

<sup>53</sup> 5 U.S.C. § 604(a)(6).

<sup>54</sup> Order at para. 9.

<sup>55</sup> 5 U.S.C. § 801(a)(1)(A).

copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>56</sup>

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<sup>56</sup> *Id.* § 604(b).