

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

In the Matter of	)	
	)	
Updates to the Commission's Rules Implementing	)	MB Docket No. 25-72
the Commercial Advertisement Loudness	)	
Mitigation (CALM) Act	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: February 27, 2025**Released: February 28, 2025****Comment Date: [30 days after date of publication in the *Federal Register*]****Reply Comment Date: [45 days after date of publication in the *Federal Register*]**

By the Commission: Chairman Carr and Commissioner Starks issuing separate statements.

I. INTRODUCTION

1. Over the past few years, the FCC has seen thousands of complaints from consumers about the loudness of commercials. Back in 2010, Congress passed a law to address this issue. The FCC adopted implementing rules in 2011 and consumer complaints to the Commission decreased in the initial years following that agency action. The issue continues to bedevil viewers nationwide, however, and last year saw a troubling jump in the number of complaints about loud commercials on broadcast, cable, and satellite television programming. In light of the continuing complaints and concerns, we now seek comment on whether the FCC should update or change its approach to this issue. This Notice of Proposed Rulemaking (NPRM) invites comment on the need for updates to the Commission's rules implementing the Commercial Advertisement Loudness Mitigation (CALM) Act. It has been over ten years since the Commission has taken action in this area, and we seek input from consumers and industry on the extent to which these rules have been effective in controlling and preventing loud commercials on programming provided by television broadcasters and pay TV providers.

II. BACKGROUND

2. The CALM Act was enacted on December 15, 2010 in response to consumer complaints about loud television commercials.¹ Among other things, the CALM Act directs the Commission to incorporate into its rules by reference and make mandatory a technical standard, developed by an industry standards development body, that is designed to prevent digital television commercial advertisements from being transmitted more loudly than the program material the commercials accompany. In 2011, the Commission adopted implementing rules that require television stations and multichannel video programming providers (MVPDs) to ensure that all commercials are transmitted to consumers at the appropriate loudness level in accordance with the industry standard mandated in the statute.² This standard requires that the average loudness of a commercial not exceed the average loudness of the

¹ Pub. L. No. 111-311, 124 Stat. 3294 (2010) (codified at 47 U.S.C. § 621).

² 47 CFR §§ 73.682(e), 73.8000(a)(4), 76.607, 76.602(b)(2); *see Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, 26 FCC Rcd 17222 (2011) (*CALM Act Order*). As mandated by the statute, the Commission incorporated into its rules by reference and made mandatory the Advanced Television Systems Committee (ATSC) A/85 Recommended Practice (RP), which describes how the television industry can monitor and control the audio of digital television programming. *See id.*

surrounding programming.³ The rules took effect on December 13, 2012, and were updated in 2014 to reflect minor changes in the technical standard.⁴

3. Under the rules, any station or MVPD that is notified by the Commission of a pattern or trend of complaints⁵ must, within 30 days, perform a 24-hour spot check of the programming being transmitted at that time on the channel or program stream at issue, to verify ongoing compliance.⁶ For commercials they insert, stations and MVPDs will be deemed in compliance if they demonstrate that they use certain equipment in the ordinary course of business.⁷ For commercials inserted by programmers and third parties, the rules establish “safe harbors” based on certifications and periodic testing.⁸

III. DISCUSSION

4. The Commission’s CALM Act rules have been in effect for over twelve years. In the years immediately following their adoption, consumer complaints to the Commission dropped significantly, indicating real efforts on the part of industry to bring their stations and systems into compliance.⁹ Nevertheless, as noted above, in recent years the Commission has received thousands of complaints from viewers who remain frustrated by the loudness of television commercials.¹⁰ Indeed, in 2024 the Commission saw a significant uptick in complaints about loud commercials on broadcast

³ 47 CFR §§ 73.8000(a)(4), 76.602(b)(2) (incorporating by reference ATSC A/85:2013 “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (March 12, 2013)).

⁴ See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Second Report and Order, 29 FCC Rcd 6294, 6294, para. 1 (2014) (making “minor changes” to the Commission’s rules restricting the loudness of television commercials by referencing the updated ATSC Recommended Practice); ATSC A/85:2013 “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,” (Mar. 12, 2013), <https://www.atsc.org/wp-content/uploads/2021/04/A85-2013.pdf>. In 2021 ATSC issued a successor to A/85, correcting typographical errors in the 2013 document. Because the corrections did not impact the commercial loudness elements of A/85, the Commission made no update to its rules at that time. A/85:2013 Corrigendum No. 1 “SPL,” (Feb. 11, 2021), <https://www.atsc.org/wp-content/uploads/2021/02/A85-2013-Corrigendum-1.pdf>. Later that year, the Media Bureau issued a public notice seeking comment on the effectiveness of the rules, but received a limited record in response. *Media Bureau Seeks Comment on Effectiveness of the Commission’s Rules Implementing the Commercial Advertisement Loudness Mitigation (CALM) Act and on Potential Updates to Those Rules*, MB Docket No. 21-181, Public Notice, 36 FCC Rcd 7363 (MB 2021).

⁵ *CALM Act Order*, 26 FCC Rcd at 17247, note 183 (“By a ‘pattern or trend’ we mean complaints sufficiently numerous and specific to justify focused review by the station/MVPD and the Commission. We decline to define what number of complaints is sufficient to constitute a pattern or trend, as this judgment will be fact-specific, based on such matters as the ratio of complaints to subscribers.”).

⁶ 47 CFR §§ 73.682(e)(3)(iv)(D)(1), 76.607(a)(3)(iv)(D)(1).

⁷ 47 CFR §§ 73.682(e)(2), 76.607(a)(2) (deeming entities in compliance if they correctly use equipment and software designed to comply with the ATSC Recommended Practice, including measuring the loudness of content and maintaining records of maintenance and testing, among other requirements).

⁸ 47 CFR §§ 73.682(e)(3),(5), 76.607(a)(3),(5) (permitting entities to rely on certifications from third party programming providers regarding compliance with the ATSC Recommended Practice, so long as the entity performs spot checks of actual compliance when appropriate).

⁹ FCC, *Consumer Complaint Data Center*, <https://www.fcc.gov/consumer-help-center-data> (FCC Complaint Database).

¹⁰ *Id.* Legislation was introduced in 2023 to modernize and expand the CALM Act, supporting the Commission’s data that the loudness of commercials remains a source of consumer frustration. See, e.g., Press Release, Sen. Whitehouse, Rep. Eshoo Reintroduce Bill to Stop Excessively Loud Commercials (Mar. 31, 2023), <https://www.whitehouse.senate.gov/news/release/sen-whitehouse-rep-eshoo-reintroduce-bill-to-stop-excessively-loud-commercials/>.

television, cable, and satellite.¹¹ We therefore seek to develop a record to help the Commission and the public better understand remaining issues in this area. We seek comment on what measures could further support the purpose of the CALM Act to prevent the transmission of commercial advertisements more loudly than accompanying program material on television broadcast and MVPD channels.

5. We invite consumers to tell us their experiences regarding the loudness of commercials as they watch programming provided by television broadcasters and MVPDs.¹² For example, are there times of day, channels, or advertisements that are a consistent source of irritation for consumers? As noted above, the ATSC Recommended Practice incorporated into our rules addresses the average loudness of commercials, rather than their maximum loudness.¹³ Anecdotal reports indicate that some advertisers may be attempting to “game” this system by using exceptionally loud sounds at the beginning of an advertisement and then reducing the loudness to achieve a technically compliant commercial that is nonetheless disruptive to viewers. We seek comment on consumer experiences with this phenomenon, and possible actions the Commission, industry, or standard developers could take in this area to further minimize consumer harm. For example, should the standard consider an approach other than simple averaging?¹⁴ We also seek comment on how easy it is for consumers to file complaints related to loud commercials. Under current Commission rules,¹⁵ complaints must include details about potential violations in order for the Commission to spot trends or patterns of loud commercials. Are there changes that could be made to the television complaint form used by the Commission to receive complaints¹⁶ to make it clearer or easier for consumers to use? We also note that, in addition to complaints regarding commercial loudness on programming provided by television broadcasters and MVPDs, complaints filed with the Commission reflect growing concern with the loudness of commercials on streaming services and other online platforms.¹⁷ To what extent does the Commission have the authority to address these complaints, or would such action require additional statutory authority from Congress?¹⁸

6. The problem of loudness and quality degradation may also be endemic in streamed shows and movies.¹⁹ If so, degraded audio quality in this context could disproportionately affect those with disabilities. We seek comments from consumers about their ability to hear and understand dialogue in streamed shows and movies and whether sound degradation particularly affects those with disabilities. We also welcome comments that examine the causes of this degradation. Could the lack of industry-wide

¹¹ Based on Commission data, in 2024 the Commission received at least 1,700 complaints referencing loud commercials that appear to relate to broadcast television, cable, and satellite, after receiving approximately 750 in 2022 and 825 in 2023.

¹² Consumers are invited to share their experiences by filing express comments in the FCC’s electronic filing system: <https://www.fcc.gov/ecfs/filings/express>. Please note that complaints and stories shared using the FCC’s online consumer complaint center will not become part of the record for this proceeding, but are shared internally for potential enforcement. More information about filing comments with the FCC is available at: <https://www.fcc.gov/consumers/guides/how-comment>.

¹³ *Supra* note {3} and accompanying text.

¹⁴ Since 2013, the Recommended Practice has required that any completely silent passages during an advertisement be excluded when calculating its average loudness, but the same does not apply to very quiet passages. *Id.* See also 47 U.S.C. § 621(a) (directing the Commission to incorporate by reference and make mandatory the ATSC Recommended Practice and “any successor thereto”).

¹⁵ 47 CFR §§ 73.682(e), 76.607.

¹⁶ FCC Consumer Inquiries and Complaints Center, TV Form - Descriptions of Complaint Issues, <https://consumercomplaints.fcc.gov/hc/en-us/articles/27646986117268-TV-Form-Descriptions-of-Complaint-Issues>.

¹⁷ *FCC Complaint Database*. See also One Ministries, Inc. Comments at 1.

¹⁸ See *supra* note 6.

¹⁹ See, e.g., Brian X. Chen, Can’t Hear the Dialogue in Your Streaming Show? You’re Not Alone, N.Y. Times (Aug. 17, 2023).

audio standards for streaming platforms contribute to this problem? Are structural market issues in the streaming business, perhaps related to market concentration, impeding efforts to arrive at an industry-wide standards? Unlike streaming platforms, broadcast providers must comply with industry-wide audio standards.²⁰ Finally, we invite comments that address the Commission's authority to regulate in this area under the CVAA.²¹ We ask these questions to gain a greater understanding of the issue of commercial loudness on streaming platforms. This Notice does not propose any specific regulations on streaming providers. The Commission will not proceed with any such regulation against any streaming provider without first seeking public comment in a subsequent notice of proposed rulemaking.

7. Finally, we seek feedback from stakeholders about whether the Commission's CALM Act rules and practices are effectively serving their intended purpose and on specific areas in which commenters believe updates are needed given the passage of time and any associated improvements in technology or new industry practices. Are there any specific compliance challenges for industry at this time? Are there changes to the Commission's rules that would better implement the directives of the CALM Act? Currently a station or MVPD is only notified by the Commission if we find a pattern or trend of complaints. Should the Commission implement other measures to convey consumer concerns to stations and MVPDs? We also seek information on the extent to which stations and MVPDs are receiving complaints directly from their viewers, including data on those complaints. We seek comment on these and all related questions surrounding the continuing problem of loud commercials.

IV. PROCEDURAL MATTERS

8. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²² 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."²³ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this NPRM. The IRFA is set forth in Appendix A. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the NPRM indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

9. *Paperwork Reduction Act.* This document contains possible new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

10. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁴ Persons making *ex parte*

²⁰ *See, e.g.*, 47 CFR § 73.682(d).

²¹ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010). We also invite comment on whether Commission authority in this area would have been changed by the previously-proposed Communications, Video, and Technology Accessibility Act. Legislation to adopt the CVTA was introduced in both the House and Senate during the 118th Congress. Communications, Video, and Technology Accessibility Act of 2023, H.R. 4858 and S.2494, 118th Cong. (2023).

²² *See* 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).

²³ *Id.* § 605(b).

²⁴ 47 CFR §§ 1.1200 *et seq.*

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

11. *Filing Requirements—Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using ECFS. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

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

13. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

14. *Providing Accountability Through Transparency Act*: Consistent with the Providing Accountability Through Transparency Act,²⁵ a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

15. *Additional Information*. For additional information on this proceeding, contact Evan Baranoff, Policy Division, Media Bureau at Evan.Baranoff@fcc.gov or 202-418-2120.

V. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to the Commercial Advertisement Loudness Mitigation Act of 2010, Pub. L. No. 111-311, 124 Stat. 3294, and sections 1, 2(a), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), and 303(r), and 621, this Notice of Proposed Rulemaking **IS ADOPTED**.

17. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁵ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

APPENDIX A

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. Section 621 of the Communications Act of 1934, as amended, adopted as part of the Commercial Advertisement Loudness Mitigation (CALM) Act,⁴ was a response to persistent consumer complaints about loud television commercials and required Commission action. The Commission's rules require that broadcast television stations and multichannel video programming providers (MVPDs) must ensure that all commercials are transmitted to consumers at the appropriate loudness level in accordance with the applicable industry standards. This proceeding requests comments on potential revisions to the Commission's rules and/or practices to better effect the objectives of Congress and to address concerns about the continuing problem of loud commercials. Ultimately, these policies and rules are intended for the benefit of television viewers.

B. Legal Basis

3. The proposed action is authorized pursuant to the Commercial Advertisement Loudness Mitigation Act of 2010, Pub. L. No. 111-311, 124 Stat. 3294, and Sections 1, 2(a), 4(i) and (j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i) and (j), 303(r) and 621.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of

¹ 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).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ Pub. L. No. 111-311, 124 Stat. 3294 (2010).

⁵ 5 U.S.C. § 603(b)(3).

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

operation; and (3) satisfies any additional criteria established by the SBA.⁸ Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹¹

6. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹² The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹³ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁴

7. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁵ U.S. Census Bureau data from the 2022 Census of Governments¹⁶ indicate there were 90,837 local governmental jurisdictions consisting of general

⁸ *Id.* § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

⁹ 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, "What's New With Small Business?," <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹¹ *Id.*

¹² 5 U.S.C. § 601(4).

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁵ 5 U.S.C. § 601(5).

¹⁶ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

purpose governments and special purpose governments in the United States.¹⁷ Of this number, there were 36,845 general purpose governments (county,¹⁸ municipal, and town or township¹⁹) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²⁰) with enrollment populations of less than 50,000.²¹ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²²

8. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”²³ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²⁴ 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 \$47 million or less in annual receipts as small.²⁵ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire

¹⁷ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁸ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁹ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²⁰ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²¹ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²³ See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

²⁴ *Id.*

²⁵ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

year.²⁶ Of that number, 657 firms had revenue of less than \$25 million per year.²⁷ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

9. As of December 31, 2024, there were 1,385 licensed commercial television stations.²⁸ Of this total, 1,308 stations (or 94.4%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 7, 2025, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of December 31, 2024, there were 382 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,801 LPTV stations and 3,091 TV translator stations.²⁹ 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.

10. *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.³⁰ 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.³¹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³² Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³³

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁴ U.S. Census Bureau data for 2017 show that there

²⁶ 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>. At this time, the 2022 Economic Census data is not available.

²⁷ *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.

²⁸ *Broadcast Station Totals as of December 31, 2024*, Public Notice, DA 25-11 (rel. Jan. 7, 2025) (*January 2025 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-25-11A1.pdf>.

²⁹ *Id.*

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

³¹ *Id.*

³² *Id.*

³³ 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.

³⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.³⁵ Of this number, 2,964 firms operated with fewer than 250 employees.³⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.³⁷ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *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.³⁹ Based on industry data, there are about 420 cable companies in the U.S.⁴⁰ Of these, only seven have more than 400,000 subscribers.⁴¹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁴² Based on industry data, there are about 4,139 cable systems (headends) in the U.S.⁴³ Of these, about 639 have more than 15,000 subscribers.⁴⁴ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

13. *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."⁴⁵ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.⁴⁶ Based on industry data, only six cable system operators have

³⁵ 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>. At this time, the 2022 Economic Census data is not available.

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

³⁷ 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>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

³⁸ *Id.*

³⁹ 47 CFR § 76.901(d).

⁴⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

⁴¹ 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).

⁴² 47 CFR § 76.901(c).

⁴³ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

⁴⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

⁴⁵ 47 U.S.C. § 543(m)(2).

⁴⁶ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice. See 47 CFR § 76.901(e)(1).

more than 498,000 subscribers.⁴⁷ 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.⁴⁸ 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.

14. *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.⁴⁹ Transmission facilities may be based on a single technology or combination of technologies.⁵⁰ 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.⁵¹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁵²

15. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵³ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.⁵⁴ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁵ 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.⁵⁶ DIRECTV and DISH Network both exceed the SBA size standard for classification as a

⁴⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

⁴⁸ 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).

⁴⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁰ *Id.*

⁵¹ 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).

⁵² *Id.*

⁵³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁴ 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>. At this time, the 2022 Economic Census data is not available.

⁵⁵ *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.

⁵⁶ 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).

small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

16. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.⁵⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁵⁹ Of this total, 2,964 firms operated with fewer than 250 employees.⁶⁰ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

17. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.⁶¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.⁶³ Of this total, 2,964 firms operated with fewer than 250 employees.⁶⁴ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

18. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁶⁵ is the closest industry with an SBA small business size standard.⁶⁶

⁵⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁹ 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>.

⁶⁰ *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.

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

⁶² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶³ 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>. At this time, the 2022 Economic Census data is not available.

⁶⁴ *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.

⁶⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁶⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁷⁰ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁷¹ 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.

19. *Competitive Local Exchange Carriers (CLECs).* 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.⁷² Wired Telecommunications Carriers⁷³ 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.⁷⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁷⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers.⁷⁷ Of these providers, the Commission estimates that 3,230 providers have 1,500 or

⁶⁷ *Id.*

⁶⁸ 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>. At this time, the 2022 Economic Census data is not available.

⁶⁹ *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.

⁷⁰ 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>.

⁷¹ *Id.*

⁷² 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.

⁷³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁵ 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>. At this time, the 2022 Economic Census data is not available.

⁷⁶ *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.

⁷⁷ 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>.

fewer employees.⁷⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Competitive Access Providers (CAPs)*. Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to CAPs. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.⁷⁹ Under the SBA small business size standard a Wired Telecommunications Carrier is a small entity if it employs 1,500 employees or less.⁸⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸¹ Of that number, 2,964 firms operated with fewer than 250 employees.⁸² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 659 CAPs and competitive local exchange carriers (CLECs), and 69 cable/coax CLECs that reported they were engaged in the provision of competitive local exchange services.⁸³ Of these providers, the Commission estimates that 633 providers have 1,500 or fewer employees.⁸⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Open Video Systems*. 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 Telecommunications Carriers."⁸⁵ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.⁸⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸⁷ Of this total, 2,964 firms operated with fewer than 250 employees.⁸⁸ 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

⁷⁸ *Id.*

⁷⁹ See, U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸¹ 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&hidePrevie w=false>. At this time, the 2022 Economic Census data is not available.

⁸² *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.

⁸³ 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>.

⁸⁴ *Id.*

⁸⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁸⁷ 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&hidePrevie w=false>.

⁸⁸ *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.

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.

22. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,”⁸⁹ transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁹⁰ Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.⁹¹

23. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).⁹² The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁴ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

24. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses.⁹⁶ The Commission’s small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these

⁸⁹ The use of the term “wireless cable” does not imply that it constitutes cable television for statutory or regulatory purposes.

⁹⁰ See 47 CFR § 27.4; *see also* 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).

⁹¹ Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

⁹² See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (*except* Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, *Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁹⁵ *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.

⁹⁶ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, “Match only the following radio service(s)”, Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.⁹⁷ Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.⁹⁸ One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.⁹⁹

25. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years.¹⁰⁰ In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

26. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁰¹ private-operational fixed,¹⁰² and broadcast auxiliary radio services.¹⁰³ They also include the Upper Microwave Flexible Use Service (UMFUS),¹⁰⁴ Millimeter Wave Service (70/80/90 GHz),¹⁰⁵ Local

⁹⁷ See 47 CFR § 27.1218(a).

⁹⁸ See Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

⁹⁹ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

¹⁰⁰ See 47 CFR § 27.1219(a).

¹⁰¹ See 47 CFR Part 101, Subparts C and I.

¹⁰² See *id.* Subparts C and H.

¹⁰³ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁰⁴ See 47 CFR Part 30.

¹⁰⁵ See 47 CFR Part 101, Subpart Q.

Multipoint Distribution Service (LMDS),¹⁰⁶ the Digital Electronic Message Service (DEMS),¹⁰⁷ 24 GHz Service,¹⁰⁸ Multiple Address Systems (MAS),¹⁰⁹ and Multichannel Video Distribution and Data Service (MVDDS),¹¹⁰ where in some bands licensees can choose between common carrier and non-common carrier status.¹¹¹ Wireless Telecommunications Carriers (*except* Satellite)¹¹² is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹¹³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹¹⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁵ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

27. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹¹⁶

28. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

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

29. The *NPRM* seeks comment on a range of potential changes to existing reporting, recordkeeping or other compliance requirements. Regarding the Commission's rules implementing Section 621 of the Communications Act, the *NPRM* seeks comment on all aspects of the commercial

¹⁰⁶ See *id.* Subpart L.

¹⁰⁷ See *id.* Subpart G.

¹⁰⁸ See *id.*

¹⁰⁹ See *id.* Subpart O.

¹¹⁰ See *id.* Subpart P.

¹¹¹ See 47 CFR §§ 101.533, 101.1017.

¹¹² See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹¹³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹¹⁵ *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.

¹¹⁶ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

loudness rules, as well as the Commission's complaint process. The Commission's rules currently require that small broadcasters and MVPDs transmit all commercials at the appropriate loudness level in accordance with the applicable industry standards. Therefore, we do not anticipate significant changes to existing reporting, recordkeeping, or compliance obligations for small entities as a result of this proceeding. However, should the Commission ultimately have the authority to adopt, and then subsequently adopt, rules extending the CALM Act to streaming services and other online platforms, this would necessitate new compliance obligations for small and other providers of those services. As noted in the *NPRM*, it has been over ten years since the Commission adopted rules in relation to the CALM Act, and information on whether small entities need to hire professionals to comply with the rules and industry standards at this time is welcome as proposed changes are considered. We anticipate the information we receive in comments including, where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the inquiries we make in the *NPRM*.

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

30. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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.”¹¹⁷

31. The *NPRM* seeks comment on the Commission's rules implementing Section 621 of the Communications Act, as amended, specifically on whether its rules, and the enforcement thereof, are successful in preventing and controlling loud television commercials. Because Congress required the Commission to apply our commercial loudness rules to all digital broadcasters and MVPDs, some small entities will be affected by any rule changes. The Commission therefore seeks comment on whether any of the burdens associated with potential new filing, recordkeeping and reporting, or other requirements can be minimized for small entities. We expect to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM*.

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

32. None.

¹¹⁷ 5 U.S.C. § 603(c)(1)–(4).

**STATEMENT OF
CHAIRMAN BRENDAN CARR**

Re: *Updates to the Commission's Rules Implementing the Commercial Advertisement Loudness Mitigation (CALM) Act*, Notice of Proposed Rulemaking, MB Docket No. 25-72
(February 27, 2025)

If there's one thing TV viewers hate more than annoying commercials, it would be *loud*, annoying commercials. And judging from my own experiences talking recently with neighbors and relatives at family gatherings, this issue is top of mind for a lot of people—second only, perhaps, to concerns about robocalls.

I want you to know that I hear you clear and loud. And I want to see what the FCC can do to help. After all, this is not the first time this issue has come up. Back in 2010, Congress provided the viewing public with some relief from these audio assaults when it passed a law called the CALM Act. Then in 2011, the Commission adopted rules to implement this law in an effort to eliminate the scourge of shouty ads at volumes far above normal listening levels. In the years immediately following the FCC's adoption of those rules, consumer complaints about loud commercials dropped significantly.

But unfortunately, in recent years, as my own experience confirms, we've seen an uptick in consumer complaints.

So today, my FCC colleagues and I are taking action. We are launching a proceeding to examine how our rules are working and how they are not. We are interested in hearing from you about any improvements we can make to the FCC's current rules. This is a good consumer protection issue, and I look forward to reviewing the record as it develops.

Thanks to Lyle Elder, Evan Baranoff, Maria Mullarkey and Hillary DeNigro for all of their work on this item.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Updates to the Commission's Rules Implementing the Commercial Advertisement Loudness Mitigation (CALM) Act*, Notice of Proposed Rulemaking, MB Docket No. 25-72
(February 27, 2025)

I appreciate that this item is responsive to consumer complaints. Consumer protection is one of our lodestars here at the Commission, and must continue to guide our work.

Notably, many of the complaints that triggered this item were against streaming providers. While the Commission has generally considered these providers to be outside the scope of our authority, at least under the Communications Act, this item seeks comment on our authority to extend commercial loudness requirements to these providers, under either the CALM Act or the CVAA. I believe this would be a new reading of these laws. And, as my colleagues have frequently noted of late, the Commission will receive no deference for novel statutory interpretation following the Supreme Court's decision in *Loper Bright v. Raimondo*, so we must tread carefully. Further, addressing commercial loudness regulations must not—like the proverbial wolf in sheep's clothing—morph into this Commission expanding its authority to cover streamers in other, more substantive areas.

I expressed these concerns to my colleagues, and I want to thank the Chairman for agreeing to my edits that make two things clear. First, that this item proposes no specific regulations on streaming providers. And second, that the Commission will not proceed with any such regulation against any streaming provider without first seeking public comment in a *subsequent* Notice of Proposed Rulemaking – not today's NPRM. We must provide ample notice and develop a substantial record in order to justify any future novel action.