

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

In the Matter of
Review of the Emergency Alert System;
Independent Spanish Broadcasters Association,
the Office of Communication of the United
Church of Christ, Inc., and the Minority Media
and Telecommunications Council, Petition for
Immediate Relief
Randy Gehman Petition for Rulemaking
EB Docket No. 04-296

ORDER

Adopted: March 23, 2016

Released: March 30, 2016

By the Commission: Commissioner O’Rielly approving in part, dissenting in part and issuing a statement.

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I. INTRODUCTION

1. In this Order we reaffirm our commitment to promoting the delivery of Emergency Alert System (EAS) alerts to as wide an audience as technically feasible, including to those who communicate in a language other than English or may have a limited understanding of the English language. Specifically, to promote and better understand the landscape of multilingual alerting across the country,

we will now require State EAS Plans¹ to include a description of the manner, if any, in which EAS Participants (including broadcasters, cable systems, and other service providers),² make available EAS alert message content to persons who communicate in languages other than English.³ We will require EAS Participants to furnish such information to State Emergency Communications Committees (SECC) upon SECC request so that the SECCs can compile this data and submit it as part of their State EAS Plan.

2. We adopt these requirements in response to the Petition for Immediate Interim Relief (Petition) jointly filed by the Independent Spanish Broadcasters Association (ISBA), the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council (MMTC) (collectively, “Petitioners”).⁴ As discussed below, the Petition proposes various changes to our Part 11 rules governing the EAS to facilitate the dissemination of multilingual EAS alerts and non-EAS emergency information. Although we do not find that the facts and record support the Petitioners’ proposed Part 11 rule revisions, we find that the reporting requirements adopted in this item will, by other means, provide information that may facilitate the dissemination of multilingual local, state and national emergency information via the EAS.⁵ Accordingly, we grant the Petition in part, to the extent that our actions herein are consistent with the Petition’s stated purpose. With respect to the Petition’s specific Part 11 proposals, we find that implementing them, even in modified form, would be difficult if not impossible to do within the existing EAS architecture. We also agree with commenters that argue that alert originators are best positioned to affect multilingual alerting, and that communities and states are best positioned to understand the language diversity and needs across their jurisdictions. Further, we observe that alternative mechanisms and technologies for providing multilingual alerting have continued to advance since the Petitioners initially filed their Petition, and are likely to become more widely deployed. Thus, we decline to grant the Petition’s proposed Part 11 rule changes, but adopt reporting requirements to acquire information that may facilitate the dissemination of multilingual local, state and national emergency information via the EAS.

II. BACKGROUND

A. The EAS

3. The EAS is a national public warning system through which broadcasters, cable systems, and other EAS Participants deliver alerts to the public to warn them of impending emergencies and dangers to life and property.⁶ The primary purpose of the EAS is to provide the President with “the

¹ See 47 U.S.C. § 11.21. See also *infra* para. 9.

² The Commission’s rules currently define EAS Participants as analog radio broadcast stations, including AM, FM, and Low-power FM stations; digital audio broadcasting stations, including digital AM, FM, and Low-power FM stations; Class A television and Low-power TV stations; digital television broadcast stations, including digital Class A and digital Low-power TV stations; analog cable systems; digital cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. See 47 C.F.R. § 11.11(a).

³ See *infra* paras. 22-24.

⁴ See The Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Interim Relief, EB Docket 04-296 (filed Sept. 22, 2005) (“Petition”). We note that MMTC is now called The Multicultural, Media, Telecom and Internet Council.

⁵ See Petition at 2.

⁶ See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, ET Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642, 646, para. 6 (2012) (*Fifth Report and Order*). A more detailed history of the EAS is summarized in the first Notice of Proposed Rulemaking in this docket. See *Review of the Emergency Alert System*, Notice of Proposed Rulemaking, 19 FCC Rcd 15775, 15776-77, paras. 6-8. In addition, an overview of the present organization and functioning of the EAS

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capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency.⁷ The EAS also is used to distribute alerts issued by state and local governments, as well as by the National Weather Service (NWS).⁸ Although EAS Participants are required to broadcast Presidential alerts, they participate in broadcasting state and local EAS alerts on a voluntary basis.⁹ As the Commission noted previously in this docket, its authority to require participation in the EAS emanates from Sections 1, 4(i) and (o), 303(r), and 706 of the Communications Act.¹⁰ The Commission, the Federal Emergency Management Agency (FEMA), and the NWS implement the EAS at the federal level.¹¹

4. The EAS is a broadcast-based, hierarchical alert message distribution system in which an alert message originator at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol.¹² The alert is then broadcast from one or more EAS Participants, and subsequently relayed from one station to another until all affected EAS Participants have received the alert and delivered it to the public.¹³ This process of EAS alert distribution among EAS Participants is

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system is included in the *Second Report and Order*. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

⁷ 47 C.F.R. § 11.1. Under the Part 11 rules, national activation of the EAS for a Presidential alert message, initiated by the transmission of an Emergency Action Notification (EAN) event code, is designed to provide the President the capability to transmit an alert message (in particular, an audio alert message) to the American public within ten minutes from any location at any time and must take priority over any other alert message and preempt other alert messages in progress. See, e.g., *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 18625, 18628, para. 8 (2005) (*First Report and Order and Further Notice of Proposed Rulemaking*). See also, e.g., 47 C.F.R. §§ 11.33(a)(11), 11.51(m), (n).

⁸ See, e.g., *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 8149, 8152-53, para. 3 (2011) (*Third Further Notice of Proposed Rulemaking*).

⁹ See 47 C.F.R. § 11.55(a). See also *First Report and Order and Further Notice of Proposed Rule Making*, 20 FCC Rcd at 18628, para. 8.

¹⁰ See, e.g., *Fifth Report and Order*, 27 FCC Rcd at 642-3, para. 2.

¹¹ The respective roles of the Commission, FEMA, and NWS are defined in a series of Executive documents. See 1981 State and Local Emergency Broadcasting System (EBS) Memorandum of Understanding Among the Federal Emergency Management Agency (FEMA), Federal Communications Commission (FCC), the National Oceanic and Atmospheric Administration (NOAA), and the National Industry Advisory Committee (NIAC) reprinted as Appendix K to Partnership for Public Warning Report 2004-1, The Emergency Alert System (EAS): An Assessment; Assignment of National Security and Emergency Preparedness Telecommunications Functions, Exec. Order No. 12472, 49 Fed. Reg. 13471 (1984); and Memorandum, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995) (1995 Presidential Statement).

¹² The message provides very basic information about the emergency involved. See 47 C.F.R. § 11.31. Under this protocol, an EAS alert uses a four-part message: (1) preamble and EAS header codes (which contain information regarding the identity of the sender, the type of emergency, its location, and the valid time period of the alert); (2) audio attention signal; (3) audio message, if included by the alert originator; and (4) preamble and “end of message” (EOM) codes. See *id.* § 11.31(a). Although the EAS Protocol specifies that the message can be audio, video, or text, in practice, only audio is sent.

¹³ The EAS Protocol is identical to the Specific Area Message Encoding (SAME) digital protocol utilized by NWS for weather alerts. See *Third Further Notice of Proposed Rulemaking*, 26 FCC Rcd at 8154, para. 5 (citing NOAA Weather Radio SAME Info, <http://www.nws.noaa.gov/nwr/nwrsame.htm>; Specific Area Message Encoding

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often referred as the “daisy chain” distribution architecture.¹⁴ Because this EAS architecture has been in place since the inception of the EAS, it is often referred to as the “legacy EAS.” Since June 30, 2012, however, authorized emergency alert authorities also have been able to distribute EAS alerts over the Internet to EAS Participants (who in turn deliver the alert to the public) by formatting those alerts in the Common Alerting Protocol (CAP) and delivering those alerts through the FEMA administered Integrated Public Alert and Warning System (IPAWS).¹⁵ This CAP-based process for distributing alerts to EAS Participants represents the “IP-based EAS.”

5. Both the legacy and IP-based EAS architectures are designed so that EAS Participants deliver to the public the alert content they receive from the EAS sources they monitor. Further, the EAS architecture and equipment is designed to operate automatically, both to minimize the risk of operator error and to facilitate EAS operation at unattended stations.¹⁶ Because the EAS is a top-down, closed, automated message distribution system in which alert messages are passed along from one entity to another – under tight technical tolerances required to ensure that the system functions properly – EAS Participants currently have a limited capacity to alter the content of the alert messages they receive, including translations of messages to alternate languages.

6. In particular, the EAS header codes, End-of-Message code, and audio message (if included) that comprise any given EAS alert are determined by the entity that originates the alert (typically, the NWS or state and local emergency management authorities).¹⁷ The EAS equipment of EAS Participants that receive the EAS alert convert the header codes into visual crawls¹⁸ and broadcast the audio¹⁹ – if the EAS Participant’s broadcasts are monitored by downstream stations, it will re-encode (regenerate) the alert so as to trigger EAS equipment in such monitoring stations, thus perpetuating the daisy chain alert distribution cycle. All of these functions are typically done automatically. In terms of timing, state and local EAS alerts are required to be broadcast within 15 minutes of receipt, and the alert

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(SAME), National Weather Service Instruction 10-1712 (Feb. 12, 2007), available at <http://www.nws.noaa.gov/directives/010/pd01017012b.pdf>.

¹⁴ At the national level, EAS message distribution starts at Primary Entry Point (PEP) stations, which are a group of geographically diverse, high power radio stations designated and tasked by FEMA to transmit “Presidential Level” messages initiated by FEMA. See *Fifth Report and Order*, 27 FCC Rcd at 646-47, para. 7. At the state level, state governors and state and local emergency operations managers activate the EAS by utilizing state-designated EAS entry points – specifically, State Primary stations and “State Relay” stations. See 47 C.F.R. § 11.20. State Relay stations relay both national and state emergency messages to local areas. See 47 C.F.R. § 11.18(d).

¹⁵ See 47 C.F.R. § 11.56; see also *Fifth Report and Order*, 27 FCC Rcd at 644-45, para. 4. CAP is an open, interoperable standard developed by the Organization for the Advancement of Structured Information Standards (OASIS), and incorporates a language developed and widely used for web documents. See *id.* at 648-49, paras. 10-11. CAP-formatted alerts can include audio, video or data files; images; multilingual translations of alerts; and links providing more detailed information than what is contained in the initial alert (such as streaming audio or video). See *id.* However, any data contained in a CAP-formatted message beyond the EAS codes and audio message (if present), such as enhanced text or video files, can be utilized locally by the EAS Participant that receives it, but cannot be converted into the EAS Protocol and thus cannot be distributed via the daisy chain process. The Part 11 rules reflect this reality. See, e.g., 47 C.F.R. § 11.51(d), (g)(3), (h)(3), (j)(2).

¹⁶ See *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1822-23, paras. 103-104 (1994) (subsequent history omitted) (*1994 Report and Order*).

¹⁷ See 47 C.F.R. § 11.31.

¹⁸ See 47 C.F.R. § 11.51(d), (g)(3), (h)(3), (j)(2).

¹⁹ For state and local alerts, EAS Participants broadcast any accompanying audio message on a permissive basis, but are required to broadcast the Presidential audio associated with the federal Emergency Action Notification. See 47 C.F.R. § 11.51(a), (b).

messages themselves are typically limited to a duration of two minutes.²⁰ An EAS Participant seeking to broadcast a non-English language translation of the audio message contained in the EAS alert message it receives within the parameters of the EAS rules, would have to manually (1) ensure the entire length of the alert, including the translated audio portion, did not exceed two minutes, and (2) complete the translation and insertion processes within 15 minutes.²¹ Further, any such audio generated by that EAS Participant would be captured by downstream stations monitoring its broadcasts, thus raising the potential for the translated audio being rebroadcast (by the monitoring stations) to unintended audiences. The same timing elements would hold true for the visual portion of the alert, which under the legacy system is a textual rendition of the location, event, time period and other relevant header code elements.

7. Although EAS Participants currently have limited capacity to alter the alert message content they receive, the Part 11 rules allow EAS Participants that provide non-English language programming to broadcast state and local EAS announcements in the primary language of the EAS Participant.²² Accordingly, non-English language EAS Participants may, for example, broadcast required visual crawls in their primary language and include in such crawls translations of other language(s), if their equipment permits.²³ Further, CAP provides alert originators with the capability to provide both enhanced text concerning an emergency condition (such as where to seek shelter) and multiple translations of such text.²⁴ The Commission also permits, but does not require, EAS Participants to utilize Text-to-Speech (TTS) software, if configured in their EAS equipment, to generate multiple language audio translations of enhanced text contained in a CAP alert message.²⁵ Accordingly, there are mechanisms in place currently to distribute multilingual EAS alerts.²⁶

²⁰ See 47 C.F.R. §§ 11.51(n), 11.33(a)(9).

²¹ The EAS Participant could not evade the 15 minute window by generating a new alert, because any such new alert would be rejected as a duplicate alert by EAS equipment of monitoring EAS Participants where the original version of such alert had previously been received via a second monitoring source. See 47 C.F.R. § 11.33(a)(10). We observe that EAS equipment manufacturers are developing multilingual translation solutions for EAS equipment, although it is unclear whether these solutions currently include automatic, reliable speech-to-speech translation. See, e.g., Michael Balderston, *Digital Alert Systems Introduces Multilingual EAS Translation Software*, TVTechnology (May 5, 2015), <http://www.tvtechnology.com/article/digital-alert-systems-introduces-multilingual-eas-translation-software/275815>.

²² See, e.g., 47 C.F.R. § 11.55(c)(4).

²³ In the case of CAP-formatted messages, visual crawls also may include enhanced text data in translated languages, if such data is included in the CAP message. See 47 C.F.R. § 11.51(d), (g)(3), (h)(3), (j)(2). As explained in the ECIG Implementation Guide, the visual crawl associated with any EAS alert is limited to 1,800 characters in total. See Organization for the Advancement of Structured Information Standards (OASIS) Common Alerting Protocol Version 1.2 (July 1, 2010), § 3.6.4.4 (“ECIG Implementation Guide”) (this document is also available on ECIG’s web site at: <http://eas-cap.org/documents.htm>) (last visited Oct. 20, 2014). The ECIG Implementation Guide sets forth guidelines for CAP-enabled EAS equipment to process multilingual text and audio contained in CAP alerts. EAS Participants are required to convert CAP-formatted EAS messages into messages that comply with the EAS Protocol requirements, following the procedures for such conversion set forth in the ECIG Implementation Guide. See 47 C.F.R. § 11.56.

²⁴ See ECIG Implementation Guide, § 3.7.

²⁵ See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, ET Docket No. 04-296, Order on Reconsideration, 27 FCC Rcd 4429, 4432, paras. 7-8 (2012).

²⁶ The Commission acknowledges that some individuals who are deaf, hard of hearing, and deaf-blind prefer American Sign Language (ASL) as their primary language, and that ASL cannot be readily conveyed over legacy EAS. However, as technology evolves, EAS Participants and States are encouraged to explore ways to enable the delivery of video alerts in ASL format, if possible. We also observe that, on August 27, 2015, the Public Safety and Homeland Security Bureau and the Consumer and Governmental Affairs Bureau held a workshop on ways to

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8. In adopting rules to facilitate CAP alerting in the *Fifth Report and Order*, the Commission concluded that it was necessary to maintain the legacy EAS alert distribution architecture.²⁷ The Commission therefore limited the CAP-related changes it made to the Part 11 EAS rules to ensuring that EAS Participants' EAS equipment will be capable of receiving and converting CAP-formatted messages into an EAS Protocol-compliant message.²⁸ In taking this approach, the Commission observed that the legacy EAS architecture provided certain inherent operational benefits, including a robust capability to provide the public with alerts even after damage to the electrical power grid, and that replacing this legacy system altogether was both premature and technically unfeasible.²⁹ The Commission also observed that its approach to CAP and its CAP EAS rules were consistent with FEMA's efforts to integrate the EAS with IPAWS.³⁰ Accordingly, while CAP greatly expands the scope of information that alert originators can distribute directly to EAS Participants, the legacy EAS remains the backbone for distributing information between EAS Participants via the daisy chain process.

9. As indicated, state and local emergency management authorities use the EAS to originate state and localized emergency alert messages. Section 11.21 of the EAS rules requires that state and local EAS operations must be described in State (and Local) EAS Plans, which must be submitted to the Commission for approval so that the Commission can ensure that these operations are consistent with national plans, FCC regulations, and national EAS operations.³¹ State EAS Plans are compiled and maintained by SECCs, and include information related to state and federal activations of the EAS.³²

B. The Petition

10. The Petition proposes five modifications to the Commission's Part 11 rules to "provide for the dissemination of multilingual local, state and national emergency information via the EAS."³³ Specifically:

- 1) "[M]odify Section 11.14 of the EAS rules to provide that the 34 PEP stations would air all Presidential level messages in both English and Spanish";
- 2) "[M]odify Section 11.18(b) of the EAS rules to include a ["Local Primary Spanish" ("LP-S") designation and provide that state and local EAS plans would designate an LP-S station in each of the local areas in which an LP-1 has been designated";
- 3) "[M]odify Section 11.18(b) of the EAS rules to include a ["Local Primary Multilingual" ("LP-M") designation in local areas where a substantial proportion of the population has its primary fluency in a language other than English or Spanish";
- 4) "[M]odify Section 11.52(d) of the EAS rules to provide that at least one broadcast station in every market would monitor and rebroadcast emergency information carried by local LP-S and LP-M stations"; and

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improve the EAS that examined, among other things, how to improve the accessibility of alerts to people with disabilities. See *FCC Announces Workshop to Promote Wider Use of the Emergency Alert System*, PS Docket No. 15-94, Public Notice, FCC Rcd 8226 (2015).

²⁷ See *Fifth Report and Order*, 27 FCC Rcd at 654-56, paras. 26-30.

²⁸ See 47 C.F.R. § 11.56. More specifically, the Commission required that EAS Participants must be able to convert CAP-formatted EAS messages into messages that comply with the EAS Protocol requirements, following the procedures for such conversion set forth in the ECIG Implementation Guide. See *id.*; *Fifth Report and Order*, 27 FCC Rcd at 657-59, paras. 36-40.

²⁹ See *Fifth Report and Order*, 27 FCC Rcd at 654-55, para. 27.

³⁰ See *id.*, 643-44, para. 2.

³¹ See 47 C.F.R. § 11.21. See also *1994 Report and Order*, 10 FCC Rcd at 1835, para. 135.

³² See *1994 Report and Order*, 10 FCC Rcd at 1835, para. 135.

³³ Petition at 2.

- 5) “[M]odify Section 11.52(d) of the EAS rules to specify that if during an emergency a local LP-S or LP-M station[] loses its transmission capability, stations remaining on the air should broadcast emergency information in the affected languages (at least as part of their broadcasts) until the affected LP-S or LP-M station is restored to the air.”³⁴

Petitioners also request that the Commission “should encourage all broadcasters to assist LP-S or LP-M stations that have been damaged during an emergency to return to the air as soon as possible.”³⁵ Petitioners subsequently referred to these proposals as the “Designated Hitter” model.³⁶

11. Subsequently, MMTC has submitted various comments and ex parte filings subsequent to the Petition’s filing that explicate its positions on the Petition and, more generally, multilingual emergency alerts and information. For example, in 2010, MMTC stated that “the problem today is receiving information in-language during and after an emergency.”³⁷ More recently, MMTC stated that the Commission should require “broadcasters to work together, and with state and market counterparts, to develop a plan that communicates each party’s responsibility based on likely contingencies.”³⁸ MMTC asserted that “[s]uch a plan could be modeled after the current EAS structure that could include a designated hitter approach to identify which stations would step in to broadcast multilingual information if the original non-English speaking station was knocked off air in the wake of a disaster.”³⁹

C. Procedural History

12. The Commission formally sought comment on the Petition in the *First Report and Order and Further Notice of Proposed Rulemaking*,⁴⁰ asking, among other things, how the Petition’s proposals could be implemented and inviting comment on any other proposals regarding how best to provide alerts to non-English speakers.⁴¹ The Commission received five comments and reply comments addressing the Petition specifically, all of which (except for those filed by MMTC) opposed the Petition’s proposals.⁴²

³⁴ *Id.* at 14-15

³⁵ *Id.*

³⁶ *See, e.g.*, Letter from the Minority Media and Telecommunications Council to Marlene H. Dortch, Secretary, FCC, ET Docket No. 04-296, filed June 18, 2008, at 3”; Letter from the Minority Media and Telecommunications Council to Marlene H. Dortch, Secretary, FCC, ET Docket No. 04-296, filed Aug. 17, 2012, at 2 n.2.

³⁷ Letter from the Minority Media and Telecommunications Council to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296, filed Aug. 4, 2010 at 1 (MMTC Aug. 4, 2010, *Ex Parte*).

³⁸ *See* Letter from the Minority Media and Telecommunications Council to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296, filed Dec. 12, 2013, at 1.

³⁹ *Id.*

⁴⁰ On October 14, 2005, before the Commission formally sought comment on the Petition, the National Association of Broadcasters (NAB) responded to the Petition by filing comments in which it supported the goals of the Petition, but opposed the Petition’s specific proposals on various grounds. *See* The National Association of Broadcasters, Comments in Response to Petition for Immediate Interim Relief, EB Docket No. 04-296 (filed on Oct. 14, 2005) (NAB Initial Comments). The Commission did not issue a Public Notice formally seeking comment on the Petition, but rather posted the Petition on ECFS in the instant docket on Oct. 4, 2005. NAB filed its response pursuant to section 1.45 of the Commission’s rules, 47 C.F.R. § 1.45, using the Oct. 4, 2005, date as the petition’s filing date. *See id.* at n.2. Petitioners filed a timely response to NAB that opposed NAB’s arguments. *See* The Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council Reply (filed Oct. 18, 2005).

⁴¹ *See First Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd. at 18657-58, para. 81.

⁴² *See* The National Association of Broadcasters Comments at 14 (filed on Jan. 24, 2006) (NAB Jan. 24, 2006, Comments); The Named State Broadcasters Associations, Joint Comments at 16-17 (filed Jan. 24, 2006) (NSBA Jan. 24, 2006, Comments); The Association For Maximum Service Television, Inc., Comments at 12, n.28 (filed

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With respect to multilingual alerting generally, the majority of comments addressing this issue contended that responsibility for issuing multilingual alerts should rest with alert message originators, and that it would be impractical and unduly burdensome for EAS Participants to translate, transcribe or otherwise effect multilingual alerting at their facilities.⁴³

13. The Commission subsequently took up the Petition in the *Second Report and Order*.⁴⁴ Specifically, the Commission observed that “Petitioners’ request is broader than the formal EAS structure.”⁴⁵ In the Further Notice portion of the *Second Report and Order*, the Commission sought more general comment on the technical, economic, practical, and legal issues involved in making emergency information accessible to persons whose primary language is not English.⁴⁶ The majority of responding comments again opposed any obligation on EAS Participants to supply non-English alerts, contending that responsibility for issuing multilingual alerts should rest with alert message originators, and that it would be impractical for EAS Participants to effect multilingual alerting at their facilities.⁴⁷

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Jan. 24, 2006) (MSTV Jan. 24, 2006, Comments); The National Cable & Telecommunications Association Reply at 2-5 (filed Feb. 23, 2006) (NCTA Feb. 23, 2006, Reply Comments).

⁴³ See *supra* note 4242. See also The Community Broadcasters Association Comments at 4 (filed Jan. 24, 2006); The Association For Maximum Service Television, Inc., Reply at 9-10 (filed Feb. 23, 2006).

⁴⁴ See *Second Report and Order*, 22 FCC Rcd at 13295 para. 41, 13306-07 para. 72.

⁴⁵ *Id.*

⁴⁶ See *id.* The Commission also directed the Public Safety and Homeland Security Bureau (Bureau) to convene a meeting of stakeholders to discuss the provision of emergency alert information to non-English speakers and to report back to the Commission about such meetings within 30 days of the *Second Report and Order's* release. See *id.* The Bureau conducted a meeting with stakeholders, including Petitioners and NAB, on June 14, 2007, covering various topics related to multilingual alerting, including Petitioners' Designated Hitter plan, and submitted a progress report on August 13, 2007. See Letter from Derek K. Poarch, Chief, Public Safety and Homeland Security Bureau, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 04-296 (filed Aug. 13, 2007). Although no consensus positions on how to effect multilingual alerting were identified, several of the participating stakeholders subsequently entered discussions to develop joint approaches to multilingual alerting, including a plan to test the Designated Hitter model in the state of Florida, which prompted Petitioners to submit a request to defer action on the multilingual broadcasting issues in the *Second Report and Order* until December 31, 2008. See The Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Request to Defer Action on Multilingual Issues (filed June 5, 2008). According to MMTC, that test ultimately did not come to fruition “due to the unwillingness of rank and file broadcasters to volunteer to be designated hitters.” Letter from the Minority Media and Telecommunications Council to Marlene H. Dortch, Secretary, FCC, at 2 (filed Aug. 8, 2008). As a result, MMTC argued that the Commission “will have to adopt rules requiring these plans.” Letter from the Minority Media and Telecommunications Council to Marlene H. Dortch, Secretary, FCC, at 2 (filed Nov. 24, 2008).

⁴⁷ See, e.g., The Ohio, Virginia, And North Carolina Associations Of Broadcasters Joint Comments at 2-3 (filed Dec. 3, 2007); The Alaska Broadcasters Association and Alaska’s State Emergency Communications Committee Comments at 3-4 (filed Dec. 3, 2007) (Alaska Broadcasters Association Dec. 3, 2007, Comments); TFT, Inc., Comments, EB Docket No. 04-296 (filed Dec. 3, 2007) at 3 (TFT Dec. 3, 2007, Comments); Sage Alerting Systems, Inc., Comments at 1-2 (filed Dec. 3, 2007); AT&T, Inc., Comments at 6 (filed Dec. 3, 2007); Verizon, Comments at 3-4 (filed Dec. 3, 2007); EchoStar Satellite L.L.C., Comments at 5 (filed Dec. 3, 2007) (EchoStar Dec. 3, 2007, Comments); National Cable & Telecommunications Association Comments at 8-9 (filed Dec. 3, 2007) (NCTA Dec. 3, 2007, Comments). The Commission received a total of 24 comments and reply comments addressing the topic of multilingual alerting. No party, other than MMTC, specifically supported the Petition’s proposals. The California Public Utilities Commission and the California Office of Emergency Services, in jointly filed comments, supported “the FCC’s further efforts to address the broader request made by [MMTC] to expand EAS to provide for multilingual EAS messages.” The California Public Utilities Commission, the California Office of Emergency Services, and the People of the State of California Comments at 9 (filed Dec. 3, 2007) at 9. In addition, XM Radio Inc. stated that if its EAS receivers were deployed in each radio station in communities where a designated Local Primary Multilingual (LPM) station went out of service, it could “simultaneously transmit both the English-language

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14. On March 25, 2010, the Bureau released the *Part 11 Public Notice*, which sought comment regarding what changes to the Part 11 rules might be needed to fully implement the obligation to process CAP-formatted alerts.⁴⁸ Although the *Part 11 Public Notice* did not seek comment specifically on the Petition, the Bureau invited comment generally on “what rules changes, if any, are necessary to our Part 11 rules to ensure access to a CAP-based EAS by people . . . who do not speak English.”⁴⁹ Again, the vast majority of comments addressing this issue contended that alert message originators must be responsible for providing the alert in the languages of the area being alerted.⁵⁰ For its part, MMTC argued that CAP “does not provide the comprehensive information people need in an emergency – how to seek shelter; where to find food; when it is safe to return; how to be safe upon returning; where to obtain medical assistance; how to find missing loved ones[,]” adding, “[o]nly local terrestrial radio’s regular programming is suited to perform that vital function.”⁵¹ MMTC therefore again requested that the Commission implement the Petition.⁵²

15. On March 11, 2014, the Bureau released the *2014 Public Notice*,⁵³ which sought to refresh the record on the Petition initiated by the *First Report and Order and Further Notice of Proposed Rulemaking*, by, among other things, requesting updates on the state of multilingual EAS alerts and other possible solutions by which the Commission could facilitate multilingual EAS alerts.⁵⁴ The Bureau also

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and foreign-language alerts received from FEMA on discrete channels to allow designated EAS participants to deliver either the English-language or the foreign-language alert, as appropriate within the EAS regulatory structure.” XM Radio Inc. and Sirius Satellite Radio Inc., Comments at 8 (filed Dec. 3, 2007).

⁴⁸ See *Public Safety and Homeland Security Bureau Seeks Informal Comment Regarding Revisions to the FCC’s Part 11 Rules Governing the Emergency Alert System Pending Adoption of the Common Alerting Protocol by the Federal Emergency Management Agency*, Public Notice, 25 FCC Rcd 2845 (PSHSB 2010) (*Part 11 Public Notice*).

⁴⁹ *Id.*

⁵⁰ See, e.g., National Cable & Telecommunications Association Comments at 5 (filed May 17, 2010) (asserting that “the key to providing multilingual EAS alerts is for the message originator, whether a federal, state or local government entity, to issue the message in English and another appropriate language,” adding, “[c]able operators simply pass the EAS message through in the two-minute window as received and generally do not have the capability to create or translate the message into additional languages.”); Sage Alerting Systems, Inc., Comments at 8 (filed May 17, 2010) (recommending that “the originator of the message be responsible for providing the alert in the common languages of the area being alerted,” and observing that “[c]omputer-based language translation is not reliable enough for use in broadcast emergency situations.”); Texas Association of Broadcasters Comments at 5 (filed May 17, 2010); Named State Broadcasters Associations Reply at 6 (filed May 17, 2010). See also Educational Media Foundation Comments at 3 (filed June 8, 2010) (asserting that “stations which offer programming in a language other than English should generate EAS activations in the primary language of its programming,” but adding that “if a station offers programming in English only, the Commission should allow the station to limit its EAS activations to English only.”). The Commission received a total of nine comments and reply comments addressing the topic of multilingual alerting. No party, other than MMTC, specifically supported the Petition’s proposals.

⁵¹ The Minority Media and Telecommunications Council Reply at 2 (filed June 14, 2010).

⁵² See *id.*

⁵³ See *Comment Requested To Refresh The Record In EB Docket No. 04-296, On Petition Filed By The Minority Media And Telecommunications Council Proposing Changes To Emergency Alert System (EAS) Rules To Support Multilingual EAS And Emergency Information*, Public Notice, 29 FCC Rcd 2682 (PSHSB 2014) (*2014 Public Notice*). At MMTC’s request, the Bureau extended the comment and reply comment filing deadlines from April 28 and May 12, 2014, respectively, to May 28 and June 12, 2014, respectively. See *Public Safety And Homeland Security Bureau Extends Comment Period For Public Notice Seeking To Refresh the Record In EB Docket No. 04-296, On Petition Filed By The Minority Media And Telecommunications Council Proposing Changes To Emergency Alert System (EAS) Rules To Support Multilingual EAS And Emergency Information*, Public Notice, 29 FCC Rcd 4107 (PSHSB 2014).

⁵⁴ See *2014 Public Notice*, 29 FCC Rcd at 2687-88.

sought updated comment on the specific proposals in the Petition as well as on MMTC's proposal, articulated in its December 12, 2013, *ex parte* letter, that broadcast stations within any given market be required to enter into emergency communications plans to support each other in the case of an emergency.⁵⁵ While all respondents generally supported the goals of the Petition, EAS Participant respondents opposed the methods proposed to achieve them. NAB argued that the circumstances that underpinned the Petition no longer apply and that State EAS Plans are inappropriate vehicles for implementing any policy concerning emergency communications plans.⁵⁶ NAB also observed, for example, that the Commission's establishment in 2007 of the Disaster Information Reporting System (DIRS)⁵⁷ has provided a mechanism for stations incapacitated by an emergency event to report their status and obtain relief.⁵⁸

16. NAB and the Named State Broadcasters Associations (NSBA) opposed rules requiring the establishment of "emergency communications plans" in favor of locally-based, voluntary solutions.⁵⁹ Several parties contended that EAS Participants simply pass through whatever alerts they receive from relevant emergency alert originators and, thus, responsibility for translating EAS alerts should rest with the alert originator.⁶⁰

17. Non-EAS Participant parties supported MMTC's goal of serving non-English speakers, but either did not address or did not directly support the methods requested by the Petition. For example, Asian Americans Advancing Justice (AAJC) supported "MMTC's goal for broadcasters and authorities to develop plans to ensure that all Americans have a greater chance of receiving lifesaving information," but urged the Commission to "do so in a realistic way that takes into account different operating situations stations are in and various resources available to them."⁶¹ The Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC) asserted that research associated with the 2011 national test of the EAS "revealed a need for EAS alerts and emergency information to be translated into

⁵⁵ *See id.* at 2685-86.

⁵⁶ *See* The National Association of Broadcasters Comments at 5-10 (filed on May 28, 2014) (NAB 2014 Public Notice Comments). *See also* Adrienne Abbott-Gutierrez (Chair of the Nevada SECC) Comments at 2 (filed May 27, 2014) (questioning whether there is any demonstrated need for multilingual alerting rules, citing anecdotal data in Nevada) (Abbott-Gutierrez 2014 Public Notice Comments).

⁵⁷ DIRS is a voluntary, efficient, web-based system that communications providers, including wireless, wireline, broadcast, and cable providers, can use to report communications infrastructure status and situational awareness information during times of crisis. *See* <http://www.fcc.gov/document/commission-activates-disaster-information-reporting-system>.

⁵⁸ *See* NAB 2014 Public Notice Comments at 8 ("If DIRS had existed during Hurricane Katrina, it would have helped Station KGLA-AM [the lone Spanish language station incapacitated during Hurricane Katrina that prompted the Petition's filing] resume operations as quickly as possible.").

⁵⁹ *See* NAB 2014 Public Notice Comments at 4-5 (NAB provided various examples of voluntary cooperation between broadcast stations to respond to emergency situation (*see id.* 7-8)); The Named State Broadcasters Associations Joint Comments at 12 (filed May 28, 2014) (NSBA 2014 Public Notice Comments). *See also* Bill Croghan (Co-Chair, Southern Nevada/Inyo California EAS operational area) Comments at 1 (filed May 2, 2014) (Bill Croghan May 2, 2014, Comments).

⁶⁰ *See, e.g.,* NAB 2014 Public Notice Comments at 11-12; NSBA 2014 Public Notice Comments at 5; National Cable & Telecommunications Association Comments at 2-3 (filed May 28, 2014) (NCTA May 28, 2014, Comments); AT&T Services, Inc., Comments at 2 (filed May 28, 2014); Bill Croghan May 2, 2014, Comments at 1; Abbott-Gutierrez 2014 Public Notice Comments at 1.

⁶¹ Letter from Jason T. Lagria, Senior Staff Attorney, Asian Americans Advancing Justice to Marlene H. Dortch, Secretary, FCC, EB Docket 04-296 at 3 (filed July 3, 2014) (AAJC *Ex Parte*). AAJC also agreed with other commenters that "it is the primary responsibility of message originators to make every effort to provide EAS alerts in multiple languages." *Id.* at 2.

American Sign Language (ASL).⁶² FEMA supported “the work of MMTC to extend alerting to the non-English speaking Population” generally, and observed that alert originators can distribute multilingual CAP alerts via IPAWS, but cautioned that some EAS equipment lack Text-to-Speech software to convert multilingual text in the CAP message into multilingual audio.⁶³

18. MMTC responded to objections that the Petition was inconsistent with the EAS architecture by contending that while its proposals “include EAS alerts, the primary goal of [its emergency communications plan] proposal is to ensure broadcasters, in their capacity as public trustees, distribute emergency information before, during, and after an emergency in the languages understood by the communities they serve.”⁶⁴ MMTC contended that translation technology “is not yet capable of capturing the nuances of language through which critical information is transmitted, making it essential that a real person convey lifesaving information in a variety of languages,” and that “[u]nder the designated hitter model, multilingual messages should be translated at the point of origin or broadcast by a live person.”⁶⁵ MMTC also contended that “[v]oluntary plans have not been put into place since Hurricane Katrina set this proceeding in motion,” and that “[n]one of the State EAS plans address multilingual EAS alerts.”⁶⁶

III. DISCUSSION

A. State EAS Plans Must Describe State Multilingual EAS Alerting Activities

19. Consistent with the record in this proceeding, we support the general goal of making emergency alert content distributed over the EAS more accessible to persons whose primary language is not English. While providing multilingual translations of an EAS alert audio message as part of a state or local EAS alert that is processed in automated mode can only be effected by the alert originator, some capabilities do exist within the EAS structure for distributing non-English language translations of the alert content. For example, the content of the EAS visual crawl information can be broadcast in various languages, if the EAS Participants’ EAS equipment has the capability to render such translations⁶⁷ and subject to the decoder reset time limit (typically, two minutes). States and localities that have the capabilities to originate CAP-formatted alert messages have more flexibility to distribute EAS alerts – enhanced textual information and audio – in multiple languages.⁶⁸ Moreover, states have always had the flexibility to implement state and local EAS alerting however they see fit, provided such implementations are consistent with the existing EAS technical and operational architecture and the Part 11 rules. For example, a state, in cooperation with its EAS Participants, could arrange for EAS Participants in selected areas to run EAS visual crawls in multiple languages and possibly include a toll-free number and/or URL where additional information could be obtained in multiple languages (assuming that the EAS Participant’s EAS equipment had that capability).⁶⁹

⁶² Wireless RERC Comments at 3 (filed May 28, 2014) (Wireless RERC Comments). The Commission intends to address accessibility issues in a related EAS rulemaking proceeding. *See supra* note 26.

⁶³ FEMA IPAWS Program Office Comments at 1 (filed April 2, 2014).

⁶⁴ Minority Media and Telecommunications Council Comments at 3 (filed May 28, 2014) (MMTC 2014 Public Notice Comments).

⁶⁵ *Id.* at 7-8.

⁶⁶ Minority Media and Telecommunications Council Reply at 3 (filed June 12, 2014) (MMTC 2014 Public Notice Reply Comments).

⁶⁷ As indicated, EAS equipment manufacturers are developing multilingual translation solutions, including solutions for generating EAS visual crawls in multiple languages. *See supra* note 2123.

⁶⁸ *See supra* para. 7.

⁶⁹ *But see* Wireless RERC Comments at 3, 5-8, where the Wireless RERC points out that the text and audio content of legacy EAS alerts cannot transport video and so does not meet the visual-based, communication requirements of

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20. We agree with the majority of commenters that alert originators are best positioned to effect multilingual alerting, since station operators simply pass down the EAS message as received within the allotted two minute timeframe and, by and large, do not have the necessary capabilities and/or time to translate or originate that alert in another language.⁷⁰ We observe that comments submitted in response to the *2014 Public Notice* suggest that mandated “one size fits all” solutions to addressing the issue of multilingual EAS alert content and, more generally, non-EAS emergency information, may not account for the variance of key factors, such as the make-up of the local population, topography, etc., that applies in each market.⁷¹ Rather, reliance by alert originators on census data, community outreach and locally targeted demographic surveys will more appropriately dictate the particular multilingual needs and nuances of the listening area – nuances that cannot be properly assessed and addressed with an across-the-board mandate.⁷² Nor would such mandates account for the varying levels of resources available to EAS Participants to implement solutions.⁷³

21. We also observe, however, that State EAS Plans currently on file do not describe what actions the state or its localities, in conjunction with the EAS Participants therein, or the EAS Participants themselves, whether acting individually or collectively, are taking with respect to distributing EAS alert content to non-English speaking audiences.⁷⁴ Accordingly, to ensure that the Commission has sufficient and accurate information on any existing state and local mechanisms to distribute multilingual state and local EAS alert content, and more generally, to ensure that the issue of disseminating EAS alert content to non-English speaking audiences has been examined by EAS Participants and state and local emergency authorities, as coordinated by the SECCs, we will require that State EAS Plans include a description of what steps, if any, have been or will be taken by EAS Participants, whether individually or in conjunction with state and local emergency authorities, to disseminate, broadcast, or otherwise make available, EAS alert content to non-English speaking audiences in such audiences’ primary language. Such descriptions shall include relevant factors that explain the degree to which alerts have been disseminated or broadcast in multiple languages. As a corollary to this reporting requirement, we will require EAS Participants to cooperate with state and local emergency authorities, and SECCs, to identify such information. We mandate no specific compliance method, but rather wish to provide the broadest flexibility to state and local governments and EAS Participants to describe any steps that have been taken to provide multilingual EAS Alerts for their respective communities. This requirement may be fulfilled by indicating that no steps have been taken.

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“the hundreds of thousands to two million people for whom ASL is their primary form of communication.” Still, as Wireless RERC observes, CAP may provide some flexibility to deliver ASL-compatible alert content or otherwise operate in conjunction with some other application to render such content. *See id.* at 8. Accordingly, we encourage EAS Participants and SECCS to explore ways to enable the delivery of video alerts in ASL format, if possible.

⁷⁰ *See supra* notes 42, 43, 4747, 50, 60, 61. *See also*, AAJC *Ex Parte* at 2 (stating “[m]ultiple languages at the point of origin are . . . critical because in many markets—large, small, and rural—there are LEP Asian Americans with no broadcast station that serves them news and information in their native language.”).

⁷¹ *See supra* note 5959.

⁷² *See e.g.*, AAJC *Ex Parte* at 1. AAJC notes, for example, that language translation equipment is not typically effective for translating Asian languages. *See id.* at 3.

⁷³ *See id.* at 3 (stating that “most Asian American-owned TV stations are Class A and low power TV stations with limited budgets and personnel”).

⁷⁴ In the *2014 Public Notice*, the Bureau specifically requested that commenters address whether and how EAS Participants and States are providing EAS alert content in languages other than English. *See 2014 Public Notice* at 8-9. Only one commenter responded directly, alluding to some *ad hoc* cooperative arrangements wherein English language and non-English language stations have been active in disseminating emergency information in non-English languages. *See Abbott-Gutierrez 2014 Public Notice Comments* at 3. Neither the record in this docket nor State EAS Plans on file provide any significant account of whether or how EAS alert content is being disseminated in languages other than English.

22. In order that we may assess these efforts, we require EAS Participants to provide the following information to their respective SECCs, who in turn will include such information in the State EAS Plan submitted to the Commission for approval:

- A description of any actions taken by the EAS Participant (acting individually, in conjunction with other EAS Participants in the geographic area, and/or in consultation with state and local emergency authorities), to make EAS alert content available in languages other than English to its non-English speaking audience(s);
- A description of any future actions planned by the EAS Participant, in consultation with state and local emergency authorities, to provide EAS alert content in languages other than English to its non-English speaking audience(s), along with an explanation for the EAS Participant's decision to plan or not plan such actions; and
- Any other relevant information that the EAS Participant may wish to provide, including state-specific demographics on languages other than English spoken within the state, and identification of resources used or necessary to originate current or proposed multilingual EAS alert content. In particular we urge EAS Participants and SECCs to include any pilot projects or other initiatives that involve translation technologies or other innovative approaches to providing non-English alerts and emergency information to the public.

23. This information will enable the Commission to ensure that any existing multilingual EAS alerting activities are consistent with the Part 11 rules, and may provide insight into what mechanisms may work best. Similarly, information identifying why multilingual EAS activities are not being planned may provide insight into structural impediments that might be ameliorated by future Commission or federal action, if appropriate. The collection and availability of this information also will aid states, EAS Participants, non-governmental organizations and other interested parties in their efforts, if any, to establish mechanisms for disseminating multilingual EAS content and other emergency information. In terms of mechanics, we will require that EAS Participants furnish the required information to SECCs no later than one year from the effective date of this order, and that all required information be compiled and summarized by the SECCs and included in or submitted as amendments to the State EAS Plans no later than six months after that. We conclude that one year is sufficient time for EAS Participants to gather, prepare and submit the required information, as the vast majority of the required information is already in their possession as it is required in their regular course of business. We further conclude that the integration of this data into a State EAS Plan, either as an amendment or a new plan, is a largely administrative process for which six months should be sufficient. In the event that there is a material change to any of the information that EAS Participants are required to furnish their respective SECCs, EAS Participants must, within 60 days of the occurrence of such material change, submit a letter to their respective SECCs, copying the Bureau, that describe such change. We will require SECCs to incorporate the information in such letters as amendments to the State EAS Plans on file with the Bureau.

24. Beyond this reporting requirement, we are not requiring any particular outcome with respect to what is done to facilitate access to multilingual EAS alert content. EAS Participants may conclude that no specific actions to facilitate access to multilingual EAS alert content is warranted or feasible in their area for any number of reasons. On the other hand, the mere process of examining this issue in coordination with state and local emergency authorities may lead to implementation of mechanisms that would expand access to EAS alert content, if appropriate. If EAS Participants wish to examine the extent to which their communities may contain an underserved non-English-speaking population, they may draw from any source to choose the methodologies and data necessary. Such

sources could include data and methodologies submitted by MMTC on January 21, 2016, as a fact-supplement and update to the Petition.⁷⁵

25. We believe that the compliance costs to EAS Participants of the rules we adopt today will be minimal, and largely limited to internal administrative charges associated with drafting a brief statement, and submitting that statement, and any other relevant information that the EAS Participant may wish to provide to their SECC for inclusion into the State EAS Plan for the state in which the EAS Participant operates. Based on the fact that virtually no parties responding to our various requests for comment on this matter have identified multilingual EAS activities currently in progress, we suspect that few EAS Participants are actually engaged in multilingual EAS activities. It therefore seems likely that the vast majority of EAS Participants will need to submit nothing more than a very brief statement to their SECC explaining their decision to plan or not plan future actions to provide EAS alert content in languages other than English to their non-English speaking audience(s).

26. For the presumably small percentage of EAS Participants that actually are engaged in multilingual EAS activities, the filing will merely require that they supply a summary of actions they already have taken in this regard. Because we anticipate that the aggregate costs associated with requiring EAS Participants to file summary statements or activities reports would be minimal, the potential benefits of promoting the delivery of alerts to those who communicate in a language other than English or may have a limited understanding of the English language will far exceed those costs imposed.⁷⁶

27. With regard to these benefits, we find that accurately understanding how the EAS is accessible to the entire public, including those who do not have a proficiency in English, will strengthen this already resilient public alert and warning tool in a manner that may help save lives and protect property during times of national, state, regional, and local emergencies.⁷⁷ To the extent that the reports suggest that these audiences are not receiving critical emergency information, the Commission and/or state and local EAS planning authorities can assess, if appropriate, what further steps should be taken. Further, the information that we request today will enhance the transparency of state decision-making in this arena, thus helping consumers to understand the level of multilingual alerting in their communities, and allowing the public to better target specific requests for improvements.

⁷⁵ See Letter from Kim M. Keenen, President and Chief Executive Officer, Minority Media and Telecommunications Council, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed Jan 21, 2016) (MMTC Jan. 21, 2016, *Ex Parte*). See also, for example, the methods used by Minnesota ECHO to determine communities in need. ECHO (Emergency and Community Health Outreach), About ECHO, <http://www.echominnesota.org/about> (positive outreach to bridge the gap for non-English speakers in Minnesota) (last visited Feb. 9, 2016). EAS Participants may also include as part of their analysis the extent to which they employ the “Good Samaritan” initiative described by MMTC. See MMTC Jan. 21, 2016, *Ex Parte* at 5.

⁷⁶ The description of anticipated costs and benefits herein is consistent with principles articulated in Exec. Order No. 13563, 76 Fed. Reg. 3821 (January 18, 2011) (Executive Order) (*citing* Exec. Order 12866, 58 Fed. Reg. 51735 (September 30, 1993) (affirming requirement that Executive Branch agencies must submit for review to the Office of Management and Budget (OMB) any regulatory actions that have an annual effect on the economy of \$100 million or more). We note that the burdens of these new rules will have full OMB review, as the rules contain modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, and require a PRA analysis by OMB to address their burdens before they can become effective. See paragraph 37, *infra* para. 37.

⁷⁷ See *Background on the Emergency Alert System (EAS)*, FEMA.GOV (2014), <https://www.fema.gov/emergency-alert-system#1> (last visited Nov. 11, 2014).

28. While MMTC has objected to reliance on voluntary mechanisms for disseminating non-English emergency information,⁷⁸ state involvement in the EAS is itself voluntary, as is participation in state and local EAS systems by EAS Participants. As a result, any action we take with respect to state and local EAS alert information is inherently voluntary in nature. Beyond that, the determinative factors in disseminating non-English EAS alert content are largely localized (e.g., local area population demographics) and contingent upon EAS Participant and state and local EAS facility capabilities. We find that making determinations in light of these factors, which will vary from locality to locality, is best rendered by the EAS Participants and state and local emergency authorities that occupy this space. Our approach facilitates coordination and evaluation in the context of EAS alert content, and while we are not mandating the development of a “plan of action,” we believe these activities will make it more likely that such plans may result, if appropriate. Moreover, adopting a one-size-fits-all mandate, apart from being impractical, if not impossible, would undermine state and local efforts to administer their state and local EAS systems in ways they deem most efficient and beneficial to their jurisdictions.

29. NAB has argued that “state EAS plans are inappropriate vehicles for implementing any policy concerning emergency communications plans,”⁷⁹ but that is not what we are doing here. Again, we are only requiring that whatever actions are being taken by EAS Participants, both individually and in conjunction with state and/or local emergency alerting authorities, along with the relevant factors explaining such actions, are reported in the State EAS Plan. As indicated, this information will both allow the Commission to confirm that any such actions will not undermine national EAS operations, and provide a basis for the Commission to more accurately assess multilingual alerting.

30. NSBA argued that “[t]he State Associations would regard any Commission-imposed obligation that a station report, at renewal time or otherwise, whether it broadcasts emergency information in a language other than the language of its general format, as an ‘indirect’ requirement to be avoided,” and that “[s]uch reporting would be tantamount to the government imposing a direct speech requirement in violation of a station’s First Amendment rights.”⁸⁰ We believe that NSBA’s constitutional objections are without merit. The reporting requirement we are adopting today involves simple disclosure of factual information about the EAS Participant’s performance of a public safety endeavor that it has voluntarily undertaken. We are not dictating any content, and we question the impact of this requirement on the EAS Participants’ speech, particularly since we have provided no consequence arising from their reported activities (or lack thereof). Whatever slight impact or burden this requirement may have is outweighed by the public safety interest in Federal, state and local governments knowing what actions are being taken to disseminate alerts to multilingual audiences in times of emergencies so that they can take further steps, if appropriate, to improve access by non-English speaking consumers if the emergency alerting authorities determine these consumers are not receiving critical emergency information. In this regard, the Supreme Court has held that similar disclosure requirements do not violate the First Amendment.⁸¹ Thus, we reject NSBA’s argument.

⁷⁸ See MMTC 2014 Public Notice Reply Comments at 3 (“Voluntary plans have not been put into place since Hurricane Katrina set this proceeding in Motion,” adding that “[n]one of the State EAS plans address multilingual EAS alerts.”).

⁷⁹ NAB 2014 Public Notice Comments at 8. Among other things, NAB argued that SECCs lack the capacity to make cooperative arrangements concerning emergency programming. See *id.* at 9.

⁸⁰ NSBA 2014 Public Notice Comments at 12.

⁸¹ See, e.g., *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 366-372 (2010) (upholding Bipartisan Campaign Reform Act of 2002 disclaimer and disclosure requirements for electioneering communications not funded by a candidate); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985) (upholding requirement that attorney advertising disclose that clients in contingent-fee cases must pay legal costs even if their cases are unsuccessful); *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 23-27 (D.C. Cir. 2014) (en banc) (upholding “purely factual and uncontroversial” country-of-origin disclosure requirement); *N.Y. State Rest. Ass’n v. N.Y. Bd. of Health*, 556 F.3d 114, 131-137 (2nd Cir. 2009) (upholding calorie information disclosure requirements);

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31. Finally, our decision here is limited to EAS content – i.e., information that is formatted in the EAS Protocol or CAP and processed over existing EAS equipment and facilities. While MMTC has asserted that “the problem today is receiving information in-language during and after an emergency,”⁸² we observe that the EAS is not designed to function as a conduit for non-EAS emergency information, and such information falls outside the scope of the EAS and the Part 11 rules.⁸³ Nonetheless, we do encourage EAS Participants, and state and local emergency alerting authorities, to evaluate the necessity and feasibility of making such information available to non-English speaking audiences, including aiding non-English language stations that may be incapacitated due to an emergency, and make plans for implementing such distribution where they deem appropriate. We encourage inclusion in the State EAS Plan of any such plans that may exist, and we encourage EAS Participants to describe any voluntary arrangements they may have entered for mutually aiding other in-market stations to distribute non-EAS emergency information in English and non-English languages.

B. The Petition’s Proposals Are Unsupported and Lack Specificity

32. We have observed that the record in this proceeding provides scant support for the methods proposed by the Petition to achieve their outcomes. Instead, as indicated, the vast majority of commenters have consistently argued that state and local authorities responsible for originating alerts are best positioned to distribute multilingual alerts, and therefore should be responsible for the language content of alerts. The record also supports reliance upon voluntary arrangements among and between EAS Participants and other parties to achieve multilingual solutions that reflect the resources, localized needs and environmental characteristics of the communities they serve.⁸⁴ These facts and record do not support the Petition’s proposed revisions to the Part 11 rules.

33. We also observe, as commenters have pointed out, that the Petition’s proposed methods for implementing the Designated Hitter plan within the EAS architecture lack specificity, and it is therefore difficult to determine whether or how such implementation could be effected from the federal level.⁸⁵ Commenters also have observed that the Petition’s proposals implicate technical problems that could compromise the operation of the EAS.⁸⁶ In sum, we conclude that the Petition does not provide

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Nat’l Elec. Mfrs. Ass’n v. Sorrell, 272 F.3d 104, 113-116 (2nd Cir. 2001) (upholding mercury disclosure requirements). *But see Nat’l Ass’n of Mfrs. v. SEC*, No. 13-5252, at 7-18 (D.C. Cir. Aug. 18, 2015) (on reh’g) (questioning extension of *Zauderer* to disclosures beyond those in advertisements and product labels). *See also U.S. v. Sindel*, 53 F.3d 874, 877-78 (8th Cir. 1995) (upholding disclosure of payment information).

⁸² MMTC Aug. 4, 2010, *Ex Parte* at 1.

⁸³ *See supra* paras. 4-6.

⁸⁴ *See supra* note 5959. *See also* EchoStar Dec. 3, 2007, Comments at 5 (“[The] uneven distribution of non-English speaking populations favors a remedy that relies on local solutions.”); The Alaska Broadcasters Association Dec. 3, 2007, Comments at 4 (“This traditionally state and local matter should stay a state and local matter – because those closest to the problem have proven that they are best-placed to solve it.”); TFT Dec. 3, 2007, Comments at 3 (“The most reasonable approach appears to be on a local, voluntary basis with available local resources.”).

⁸⁵ *See, e.g.*, NAB Jan. 24, 2006, Comments at 14-16; NSBA Jan. 24, 2006, Comments at 16-17; MSTV Jan. 24, 2006, Comments at 12, n.28; NCTA Feb. 23, 2006, Reply Comments at 2-5; Educational Media Foundation Comments at 2 (filed May 23, 2014). It is unclear, for example, how a designated hitter station would know whether an LP-S or LP-M station in its geographic area had become incapacitated due to an emergency, or how the designated hitter station could effect a translation of the EAS alert content within the framework of the EAS architecture without significant local consent and coordination.

⁸⁶ *See, e.g.*, NAB Initial Comments at 4-6; NAB Jan. 24, 2006, Comments at 15-16; NSBA Jan. 24, 2006, Comments at 17; NCTA Feb. 23, 2006, Reply Comments at 3-5; MSTV Jan. 24, 2006, Comments at 12, n.28; NCTA Dec. 3, 2007, Comments at 7-10; NCTA May 28, 2014, Comments at 3-5; NAB 2014 Public Notice Comments at 10-11. For example, NCTA has pointed out that the two-minute duration of state and local EAS alert messages constrains the number of translations that can practically be included in any legacy EAS alert, while originating multiple alerts, each in a separate language, would likely result in EAS decoders rejecting of all but the

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sufficient detail as to the precise functionalities it seeks to achieve through its proposed Part 11 rule revisions and how those could be implemented within the technical architecture, including the EAS Protocol and distribution mechanisms, of the EAS.

34. Against this backdrop, and given that options for effectuating multilingual EAS alerts at the local level necessitates voluntary solutions tailored to the relevant multilingual needs of the community served, we do not support moving forward with the Petition's specific proposals. Accordingly, while we grant the Petition to the extent our actions herein are consistent with its stated purpose of facilitating the dissemination of multilingual local, state and national emergency information via the EAS – i.e., by amending the Part 11 rules to incorporate the reporting requirements described above – we otherwise deny the Petition.

IV. PROCEDURAL MATTERS

A. Accessible Formats

35. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

B. Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. § 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix B.

C. Paperwork Reduction Act Analysis

37. As indicated in paragraph 24 of the Final Regulatory Flexibility Analysis, this document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. These modified requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

38. In this present document, we have assessed the effects of the information collection associated with the reporting requirements set forth in this Order, and find that because this information collection involves information that is readily available and easily accessible to all EAS Participants, none of these requirements should pose a substantial burden for businesses with fewer than 25 employees.

D. Congressional Review Act

39. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), see 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this Order IS ADOPTED, and the Petition for Immediate Interim Relief filed by the Independent Spanish

(Continued from previous page) _____
initial version as duplicates. See, e.g., NCTA Feb. 23, 2006, Reply Comments at 3-5; NCTA Dec. 3, 2007, Comments at 8-10.

Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council is hereby GRANTED as described herein, and otherwise DENIED.

41. IT IS FURTHER ORDERED that the rules adopted herein, which contain new or modified information collection requirements, WILL BECOME EFFECTIVE on the date specified in a Commission notice published in the Federal Register announcing their approval under the Paperwork Reduction Act by the Office of Management and Budget, which date will be at least 30 days after the date that this Order and rules adopted herein are published in the Federal Register.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 11 to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

2. Revise § 11.21 to read as follows:

§ 11.21 State and Local Area plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The plans include the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP and SR). State and local plans contain unique methods of EAS message distribution such as the use of the Radio Broadcast Data System (RBDS). The plans also include information on actions taken by EAS Participants, in coordination with state and local governments, to ensure timely access to EAS alert content by non-English speaking populations. The plans must be reviewed and approved by the Chief, Public Safety and Homeland Security Bureau, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

* * *

(d) EAS Participants are required to provide the following information to their respective State Emergency Communications Committees (SECC) within one year from the publication in the Federal Register of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995 and an effective date of the rule amendment:

(i) a description of any actions taken by the EAS Participant (acting individually, in conjunction with other EAS Participants in the geographic area, and/or in consultation with state and local emergency authorities), to make EAS alert content available in languages other than English to its non-English speaking audience(s),

(ii) a description of any future actions planned by the EAS Participant, in consultation with state and local emergency authorities, to provide EAS alert content available in languages other than English to its non-English speaking audience(s), along with an explanation for the Participant's decision to plan or not plan such actions, and

(iii) any other relevant information that the EAS Participant may wish to provide, including state-specific demographics on languages other than English spoken within the state, and identification of resources used or necessary to originate current or proposed multilingual EAS alert content.

(e) Within six months of the expiration of the one-year period referred to in subsection (d) of this section, SECCs shall, as determined by the Commission's Public Safety and Homeland Security Bureau, provide a summary of such information as an amendment to or as otherwise included as part of the State EAS Plan filed by the SECC pursuant to Section 11.21 of this Part.

(f) EAS Participants shall, within 60 days of any material change to the information they have reported pursuant to subsections (d)(i) and (d)(ii), submit letters describing such change to both their respective SECCs and the Chief, Public Safety and Homeland Security Bureau. SECCs shall incorporate the information in such letters as amendments to the State EAS Plans on file with the Bureau under section 11.21 of this Part.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the First Report and Order and Further Notice of Proposed Rulemaking (*First FNPRM*) in this proceeding.² The Commission sought written comment on the proposals in the *First FNPRM*, including comment on the IRFA. Because the Order amends the Commission's rules, this Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Order

2. This Order adopts changes to the Commission's Part 11 rules governing the Emergency Alert System (EAS) to require that State EAS Plans include a description of what steps have been taken by broadcasters, cable systems, and other entities subject to the Part 11 rules (generally referred to as "EAS Participants"), whether individually or in conjunction with state and local emergency authorities, to disseminate or broadcast, or otherwise make available, EAS alert content to non-English speaking audiences in such audiences' primary language. This Order also requires that State EAS Plans include a description of any future actions planned by EAS Participants, in consultation with state and local emergency authorities, to provide EAS alert content available in languages other than English to its non-English speaking audience(s), along with an explanation for the Participant's decision to plan or not plan such actions. The objectives of this rule change are to ensure that the Commission has sufficient and accurate information on any existing state and local mechanisms to distribute multilingual state and local EAS alert content, and more generally, to ensure that the issue of disseminating EAS alert content to non-English speaking audiences has been examined by EAS Participants and state and local emergency authorities, as coordinated by the State Emergency Communications Committees.

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

3. The Small Business Administration (SBA) filed no comments in this proceeding, and there were no other comments specifically addressed to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which 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 rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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.

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.³ First, nationwide,

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

² See Review of the Emergency Alert System, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 18625, Appendix E (2005) (*First FNPRM*).

³ See 5 U.S.C. §§ 601(3)-(6).

there are a total of approximately 28.2 million small businesses, according to the SBA.⁴ In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁵ Nationwide, as of 2007, there were approximately 1,621,315 small organizations.⁶ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”⁷ Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.⁸ We estimate that, of this total, as many as 88,506 entities may qualify as “small governmental jurisdictions.”⁹ Thus, we estimate that most governmental jurisdictions are small.

6. *Television Broadcasting.* The SBA defines a television broadcasting station that has no more than \$35.5 million in annual receipts as a small business.¹⁰ Business concerns included in this industry are those primarily engaged in broadcasting images together with sound.¹¹ These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.¹² 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.¹³ Programming may originate in the station’s own studio, from an affiliated network, or from an external source.¹⁴

7. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of \$38.5 million or less. Based on this data and the associated size standard, we conclude that the majority of such establishments are small. The

⁴ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs> (showing figures are from March 2014).

⁵ 5 U.S.C. § 601(4).

⁶ INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC & DESK REFERENCE* (2010).

⁷ 5 U.S.C. § 601(5).

⁸ U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 2011*, Table 427 (2007)

⁹ The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 small governmental organizations in 2007. If we assume that county, municipal, township and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,125. If we make the same assumption about special districts, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 special districts. Therefore, of the 89,476 small governmental organizations documented in 2007, as many as 88,506 may be considered small under the applicable standard. This data may overestimate the number of such organizations that have a population of 50,000 or less. U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES 2011*, Tables 427, 426 (Data cited therein are from 2007).

¹⁰ Television broadcasting stations with no more than \$38.5 million in annual receipts are considered a small business pursuant to the SBA’s standards. See U. S. SMALL BUSINESS ADMINISTRATION, *TABLE OF SMALL BUSINESS SIZE STANDARDS, MATCHED TO NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM CODES* (July 14, 2014), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf (codified at 13 C.F.R. § 121.201 (2015)).

¹¹ See 13 C.F.R. § 121.201, NAICS Code 515120 (2007).

¹² *Id.*

¹³ *Id.*

¹⁴ U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2007%20NAICS%20Search).

Commission has estimated the number of licensed noncommercial educational (“NCE”) stations to be 396.¹⁵ We do not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low power television (“LPTV”) stations, and 4,518 licensed TV translators.¹⁶ Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

8. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.¹⁷ Our estimate, therefore, likely overstates the number of small entities affected by the proposed rules because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

9. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

10. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station’s own studio, from an affiliated network, or from an external source.¹⁸ The SBA defines a radio broadcasting entity that has \$38.5 million or less in annual receipts as a small business.¹⁹ According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of \$38.5 million or less. Therefore, the majority of such entities are small. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917.²⁰ We do not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.²¹ In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.²² We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

¹⁵ News Release, *Broadcast Station Totals as of March 31, 2013* (MB rel. Apr. 12, 2013) (“*March 31, 2013 Broadcast Station Totals Press Release*”), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0412/DOC-320138A1.pdf.

¹⁶ See *March 31, 2013 Broadcast Station Totals Press Release*.

¹⁷ “[Businesses] are affiliates of each other when one [business] controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

¹⁸ U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515112&search=2007%20NAICS%20Search).

¹⁹ See 13 C.F.R. § 121.201, NAICS Code 515112. See also *Small Business Size Standards*, 77 Fed. Reg. at 72704.

²⁰ *March 31, 2013 Broadcast Station Totals Press Release*.

²¹ “[Businesses] are affiliates of each other when one [business] controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

²² See 13 C.F.R. § 121.102(b).

11. The same SBA definition that applies to radio broadcast licensees would apply to low power FM (“LPFM”) stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$38.5 million in annual receipts. Currently, there are approximately 864 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small under the SBA definition.

12. *Wired Telecommunications Carriers.* This industry comprises establishments “primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.”²³ Transmission facilities “may be based on a single technology or a combination of technologies.”²⁴ 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.²⁵ By exception, “establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁶ In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees.²⁷ Census data for 2007 shows 3,188 firms in this category.²⁸ Of these, 3,144 had fewer than 1,000 employees.²⁹ On this basis, the Commission estimates that a substantial majority of the providers of wired telecommunications carriers are small.³⁰

13. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.”³¹ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.³² Census data for 2007 shows 3,188 firms in this category.³³

²³ See U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007%20NAICS%20Search).

²⁴ *Id.*

²⁵ *See id.*

²⁶ *Id.*

²⁷ See 13 C.F.R. § 121.201, NAICS Code 517110.

²⁸ See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110; available at, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

²⁹ *See id.*

³⁰ *Id.*

³¹ *See id.* Examples of this category are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (“CCTV”) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (“DTH”) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (“MMDS”).

³² *See supra* note 28.

Of these, 3,144 had fewer than 1,000 employees.³⁴ Therefore, under this size standard, we estimate that the majority of these businesses can be considered small.

14. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.³⁵ Industry data indicate that there are currently 4,600 active cable systems in the United States.³⁶ Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.³⁷ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.³⁸ Current Commission records show 4,600 cable systems nationwide.³⁹ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁴⁰ Thus, under this standard as well, we estimate that most cable systems are small entities.

15. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴¹ There are approximately 52,403,705 cable video subscribers in the United States today.⁴² Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁴³ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁴⁴ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁴⁵ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Broadband Radio Service and Educational Broadband Service*. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel

(Continued from previous page) _____

³³ See *supra* note 29.

³⁴ See *id.*

³⁵ 47 C.F.R. 76.901 (e)

³⁶ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 15, 2015. See www.fcc.gov/coals.

³⁷ See SNL KAGAN, https://www.snl.com/Interactivex/TopCable_MSOs.aspx.

³⁸ See 47 C.F.R. 76.901(c).

³⁹ See *supra* note 28.

⁴⁰ See *supra* note 38.

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

⁴² See SNL KAGAN, <https://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx>.

⁴³ See 47 § C.F.R. 901(f), nn ff. 1, 2, and 3.

⁴⁴ See SNL KAGAN, https://www.snl.com/Interactivex/TopCable_MSOs.aspx

⁴⁵ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.901(f).

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

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

⁴⁶ 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, MM Dkt. No. 94-131, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995).

⁴⁷ *Id.* at 9670-73, ¶¶ 190-92.

⁴⁸ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1500 or fewer employees.

⁴⁹ Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice*, 24 FCC Rcd 8277 (2009).

⁵⁰ *Id.* at 8296 ¶ 73.

⁵¹ Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, *Public Notice*, 24 FCC Rcd 13572 (2009).

audio and video programming distribution; and wired broadband Internet services.”⁵² The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁵³ Census data for 2007 shows 3,188 firms in this category.⁵⁴ Of these, 3,144 had fewer than 1,000 employees.⁵⁵ Therefore, under this size standard, we estimate that the majority of these businesses can be considered small. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission’s internal records indicate that as of September 2014, there are 2,207 active EBS licenses.⁵⁶ The Commission estimates that of these 2,207 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁵⁷

18. *Wireless Telecommunications Carriers (except satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁵⁸ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.⁵⁹ The appropriate size standard under SBA rules for the category “Wireless Telecommunications Carriers (except satellite)” is that a business is small if it has 1,500 or fewer employees.⁶⁰ Census data for 2007 show that there were 1,383 firms that operated for the entire year.⁶¹ Of this total, 1,368 firms had employment of fewer than 1000 employees.⁶² Thus under this category and

⁵² U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (“CCTV”) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (“DTH”) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (“MMDS”).

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

⁵⁴ See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110; available at, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

⁵⁵ See *id.*

⁵⁶ See

http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp;JSESSIONID_ULSSEARCH=wJ50JkbCQKvNWBjv1s0ZZWQQs1FnmNDjQwvSHsDG2FHSyGV6hdf!203694623!-701794836.

⁵⁷ The term “small entity” within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

⁵⁸ See U.S. Census Bureau, 2007 NAICS Definitions, 517210 Wired Telecommunications Carriers, [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search).

⁵⁹ See *id.*

⁶⁰ See 13 C.F.R. § 121.201, NAICS code 517210.

⁶¹ See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517210; available at, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

⁶² See *id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1,000 employees or more.”

the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small.⁶³

19. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. This category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.”⁶⁴ 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.⁶⁵ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁶⁶ Census data for 2007 shows 3,188 firms in this category.⁶⁷ Of these, 3,144 had fewer than 1,000 employees.⁶⁸ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

20. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”⁶⁹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.⁷⁰ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

21. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under

⁶³ *See id.*

⁶⁴ *See* U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007%20NAICS%20Search).

⁶⁵ *See id.* Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); CCTV services; VoIP service providers, using own operated wired telecommunications infrastructure; DTH services; telecommunications carriers (wired); satellite television distribution systems; and MMDS.

⁶⁶ *See* 13 C.F.R. § 121.201, NAICS Code 517110.

⁶⁷ *See* U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110; available at, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

⁶⁸ *See id.*

⁶⁹ 5 U.S.C. § 601(3).

⁷⁰ *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” *See* 15 U.S.C. § 632(a); *see also* 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

that size standard, such a business is small if it has 1,500 or fewer employees.⁷¹ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁷² Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.⁷³ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁷⁴ In addition, 72 carriers have reported that they are Other Local Service Providers.⁷⁵ Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.⁷⁶ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small.

22. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁷⁷ The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁷⁸ For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.⁷⁹ Of this total, 482 firms had annual receipts of less than \$25 million.⁸⁰ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

23. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows. “This U.S. industry comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁸¹ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁸² For this category, census data for 2007 show that there

⁷¹ See 13 C.F.R. § 121.201, NAICS code 517110.

⁷² See *Trends in Telephone Service* at Table 5.3.

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”; <<http://www.census.gov/naics/2007/def/ND517410.HTM>> .

⁷⁸ 13 C.F.R. § 121.201, NAICS code 517410.

⁷⁹ U.S. Census Bureau, *2007 Economic Census of the United States*, Table EC0751SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2007, NAICS code 517410 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table

⁸⁰ *Id.*

⁸¹ U.S. Census Bureau, North American Industry Classification System, Definition of “All Other Telecommunications,” NAICS code 517919, *available at* <<http://www.census.gov/cgi-bin/sssd/naics/naicsrch>>.

⁸² See 13 C.F.R. § 121.201, NAICS code 517919.

were 2,383 firms that operated for the entire year.⁸³ Of those firms, a total of 2,346 had gross annual receipts of less than \$25 million. Thus, we estimate that the majority of All Other Telecommunications firms can be considered small.

24. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception,⁸⁴ is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,⁸⁴ which was developed for small wireline businesses. The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.⁸⁵ Census data for 2007 shows 3,188 firms in this category.⁸⁶ Of these, 3,144 had fewer than 1,000 employees.⁸⁷ Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.⁸⁸ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.⁸⁹ Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

⁸³ See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517919; available at, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

⁸⁴ See 13 C.F.R. § 121.201; 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁵ See 13 C.F.R. § 121.201, NAICS Code 517110.

⁸⁶ See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110; available at, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

⁸⁷ See *id.*

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

⁸⁹ See *15th Annual Competition Report*, at ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at ¶¶ 27, 110-11.

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

25. There are revisions to current Part 11 reporting, recordkeeping, or compliance requirements set forth in the Order. Specifically, the Order revises section 11.21(a) to require that State EAS Plans include a description of what steps have been taken by broadcasters, cable systems, and other entities subject to the Part 11 rules (generally referred to as “EAS Participants”), whether individually or in conjunction with state and local emergency authorities, to disseminate or broadcast, or otherwise make available, EAS alert content to non-English speaking audiences in such audiences’ primary language. This Order also requires that State EAS Plans include a description of any future actions planned by EAS Participants, in consultation with state and local emergency authorities, to provide EAS alert content available in languages other than English to its non-English speaking audience(s), along with an explanation for the Participant’s decision to plan or not plan such actions. The objectives of these rule changes are to ensure that the Commission has sufficient and accurate information on any existing state and local mechanisms to distribute multilingual state and local EAS alert content, and more generally, to ensure that the issue of disseminating EAS alert content to non-English speaking audiences has been examined by EAS Participants and state and local emergency authorities, as coordinated by the SECCs.

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

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

27. Based on the Commission’s review of the record, the Commission finds that it is practicable for all SECCs and EAS Participants, including small and rural EAS Participants, to comply with the minimal reporting requirements set forth in the Order without incurring unduly burdensome costs. With respect to alternative approaches, the Commission already has invited EAS Participants and other stakeholders to describe their multilingual alerting activities generally in the *2014 Public Notice*,⁹⁰ but the response to that request for voluntary submission of information was sparse and inadequate.

28. Further, this Order finds that the life-saving public safety benefits of imposing the reporting requirements, which include improved Federal oversight of the EAS, potential expansion of access to EAS alert content by those who communicate in a language other than English or may have a limited understanding of the English language, aiding state decision-making in multilingual EAS activities, and helping consumers to understand the level of multilingual alerting that exists in their areas, far outweigh the one-time, minimal costs of such requirements.

29. Finally, in the event that small entities face unique circumstances with respect to these requirements, such entities may request waiver relief from the Commission. Accordingly, the Commission finds that it has discharged its duty to consider the burdens imposed on small entities.

30. Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this

⁹⁰ See Public Notice, Comment Requested To Refresh The Record In EB Docket No. 04-296, On Petition Filed By The Minority Media And Telecommunications Council Proposing Changes To Emergency Alert System (EAS) Rules To Support Multilingual EAS And Emergency Information, 29 FCC Rcd 2682 (PSHSB 2014) (2014 Public Notice).

FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART, DISSENTING IN PART**

Re: Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket No. 04-296.

While I will support the majority of this order, I do so with one reservation. This item requires that EAS participants report whether or not they are taking steps to provide EAS alerts in languages other than English. In doing so, it recognizes that there are significant impediments to providing multilingual alerts. While participants may fulfill the requirement by stating that no actions are being taken, I have learned that today's reporting requirements tend to miraculously morph into tomorrow's regulations, even if every entity complies. Although I understand the importance of all Americans being able to understand emergency alerts, I am unlikely to support any actions down the road that use EAS participants' legitimate disclosures that they are not implementing multilingual alerts as the sole basis for costly, burdensome rules.

Relatedly, I must dissent in part to the non-existent cost-benefit analysis contained in this item. Instead of an analysis, the item simply concludes that the anticipated costs will be minimal, so "the potential benefits of promoting the delivery of alerts to those who communicate in a language other than English or may have a limited understanding of the English language will far exceed those costs imposed."¹ It adds in a footnote that this analysis is "consistent with [the] principles articulated" in two Executive Orders and that any burdens will be reviewed as part of OMB's Paperwork Reduction Act (PRA) analysis.²

While it may be true that the costs of this reporting requirement may not be substantial, an analysis should still be done to show this is the case. In fact, the very Executive Orders cited in the order support such an undertaking. Executive Order 12866, signed by President Clinton, states that:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.³

To ensure consistency with this regulatory philosophy, it continues to say that agencies "shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."⁴ The Obama Administration reiterated these principles, in Executive Order 13563, stating that agencies must "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs" and that, in doing so, they should "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."⁵ To the extent that some argue that independent agencies are not subject to these executive

¹ *Supra* para. 26.

² *Supra* note 76.

³ Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

⁴ *Id.* at 51,736.

⁵ Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

orders, even the Obama Administration, which this Commission seems keen on following in terms of direction, believes that such agencies should abide by the requirements.⁶

In order to properly balance all of the competing concerns and objectives, our items need to quantify the costs and benefits of any rules being proposed or adopted. This is the only way to make a *reasoned determination* that the benefits outweigh the burdens of regulation. Further, the PRA process is separate and apart from and does not obviate the Commission's obligation to determine whether regulation is justified. Cost-benefit information is needed to inform Commissioners as to the validity of particular rules as they consider and vote an item, not after the fact when the PRA paperwork is done.

In this instance, there is the cost to each EAS participant to create, review and submit a report detailing the steps taken – or not taken – to implement multilingual EAS alerts; states then have to incorporate the information from all participants into their EAS Plans, which will undoubtedly go through layers of review; and this process must be repeated if there is any change in efforts. The benefit is having information on hand about the state of multilingual alerting – whether this will promote these alerts is unproven. I realize that determining costs and benefits is not an exact science, but to not even attempt an analysis to justify our actions is incomprehensible, bad policy and sets dangerous precedent.

Therefore, I vehemently disagree with this cost-benefit analysis – or, more appropriately, lack thereof contained within – and the Commission's continued refusal to bother with such work until after burdens are already imposed.

⁶ Exec. Order No. 13,579, 76 Fed. Reg. 41,587 (July 14, 2011); Memorandum from Cass R. Sunstein, Administrator, Executive Office of the President, Office of Management and Budget to the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies (Feb. 2, 2011), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-10.pdf>.