

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

In the Matter of
Closed Captioning of Video Programming
Telecommunications for the Deaf and Hard of Hearing, Inc.
Petition for Rulemaking
CG Docket No. 05-231

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: July 16, 2024 Released: July 18, 2024

Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [60 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (Further Notice), we propose to amend our closed captioning rules for video programming to remove unnecessary regulatory burdens on video programmers, including thousands of small entities, while maintaining compliance with the captioning rules. Our proposal is intended to relieve a provider of video programming to cable or other multichannel systems from the obligation to register with the Commission and to certify captioning compliance if the relevant certification has been filed by another competent entity. Under these proposals, providers of non-exempt programming would only be relieved from these filing requirements, not the underlying obligation to provide captioning in accordance with our quality standards.

2. Specifically, for programming carried on public, educational, and governmental access (PEG) channels, we propose that our captioning registration and certification requirements shall not apply to video programmers that provide video programming exclusively to PEG channels that are exempt from the closed captioning requirements. We also seek comment on the extent to which administrators of non-exempt PEG channels would be able to certify compliance for programming carried on such channels, so that providers of programming to such channels could be relieved of filing obligations for such programming as well.

3. In addition, for programming carried on nonbroadcast networks for distribution by a cable operator or other multichannel video programming distributor (MVPD), we propose that captioning registration and certification requirements shall not apply to the providers of such programming if the network itself certifies that it is exempt or that all programming comprising the network’s linear line-up is either exempt from or compliant with the closed captioning rules.

II. BACKGROUND

A. Closed Captioning Requirements

4. Section 713 of the Communications Act (the Act) directs the Commission to ensure that video programming is fully accessible through the provision of closed captioning.1 At present, all new

1 47 U.S.C. § 613(b). The Act defines “video programming” to mean “programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media [as defined at 47 U.S.C. § 153(14)].” Id. § 613(h)(2). The Commission defines video programming as

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English and Spanish language video programming, both analog and digital, and 75 percent of pre-rule video programming that is not exempt from the Commission's rules must be captioned.² Programming is exempt from the Commission's captioning rules if it (1) falls into one of 13 self-implementing, categorical exemptions,³ or (2) has been granted an individual exemption from the closed captioning obligations after making a showing that providing captions would be economically burdensome.⁴ Categorical or individual captioning exemptions may apply on a channel-wide or program-by-program basis.⁵

5. Since the inception of the Commission's closed captioning rules, the Commission has assigned primary responsibility for the provision of closed captioning on television programming to video programming distributors (VPDs).⁶ In 2014, the Commission amended its television captioning rules to add requirements governing the quality of captions.⁷ The Commission allows a VPD to satisfy in part its obligations to provide captioning and comply with the captioning quality rules by ensuring that each video programmer whose programming it carries has certified its compliance with the Commission's closed captioning rules.⁸

6. In 2016, in the *Closed Captioning Responsibilities Order*,⁹ the Commission took the further steps of: (1) placing captioning obligations on video programmers,¹⁰ as well as VPDs;¹¹ and (2)

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"[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use." 47 CFR § 79.1(a)(10).

² 47 CFR § 79.1(b). Pre-rule video programming is defined as analog video programming first shown before January 1, 1998, and digital video programming first shown before July 1, 2002. *Id.* § 79.1(a)(8).

³ *Id.* § 79.1(d) (listing exemptions adopted pursuant to authority provided in 47 U.S.C. § 613(d)(1)).

⁴ *See* 47 U.S.C. § 613(d)(3); 47 CFR § 79.1(f). Requests for an individual captioning exemption based on economic burden may be filed by a video programming provider, producer, or owner. *Id.* The Commission's rules define a video programming provider as any "video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming." *Id.* § 79.1(a)(13).

⁵ *See, e.g., Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272, 3364, para. 200 (1997) (*1997 Closed Captioning Report and Order*), *recon. granted in part*, 13 FCC Rcd 19973 (1998); *see also* 47 CFR § 79.1(f)(1) (noting that exemption petitions may be filed by video programming providers, producers, or owners and "[e]xemptions may be granted, in whole or in part, for a channel of video programming").

⁶ *1997 Closed Captioning Report and Order*, 13 FCC Rcd at 3286-87, paras. 27-29. A VPD is "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor . . . and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission." 47 CFR § 79.1(a)(11).

⁷ *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, CG Docket No. 05-231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014) (*Closed Captioning Quality Order*).

⁸ 47 CFR § 79.1(j)(1).

⁹ *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, CG Docket No. 05-231, Second Report and Order, 31 FCC Rcd 1469, 1492-93, para. 42 (2016) (*Closed Captioning Responsibilities Order*).

¹⁰ A video programmer is "[a]ny entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming." 47 CFR § 79.1(a)(9).

¹¹ *Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1484-86, paras. 28-31.

apportioning responsibility for caption quality between VPDs and video programmers.¹² In addition, to ensure that video programmers can be held accountable for satisfying their captioning obligations, the Commission adopted requirements for each video programmer to register with the Commission¹³ and certify compliance with the captioning rules.¹⁴ Video programmers are required to register and submit certifications of compliance to the Commission once the Commission’s website is ready to receive such certifications and a compliance date is published in the Federal Register.¹⁵

B. PEG Channel Programming

7. Section 611 of the Act permits cable franchising authorities to “establish requirements in a franchise with respect to designation or use of channel capacity for public, educational, or governmental use.”¹⁶ *Public* access channels are available for the general public’s use and typically are administered either by a cable operator or by a third party designated by the franchising authority.¹⁷ Programming time on *educational* access channels is typically allocated among local schools, colleges and universities by the franchising authority or the cable operator.¹⁸ *Governmental* access channels generally are controlled by local governments, which use these channels for governmental programming in their jurisdictions.¹⁹ Franchising authorities also may “require cable operators to set aside channels for educational or governmental use on institutional networks, i.e., channels that are generally available only to institutions such as schools, libraries, or government offices.”²⁰

C. Request for Relief from Registration and Certification Requirements

8. In a petition filed in August 2016, the Alliance for Community Media (ACM) requests that the closed captioning registration and certification requirements be waived for program producers

¹² *Id.* at 1478-84, paras. 17-26.

¹³ 47 CFR § 79.1(i)(3) (requiring video programmers to file contact information, including the name, title or office, telephone number, fax number (if applicable), postal mailing address, and email address of a person with primary responsibility for addressing captioning issues and ensuring compliance with the Commission’s rules); *Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1510-14, paras. 79-84 (“[W]e require video programmers to file their contact information through a web form located on the Commission’s web site for the handling of written closed captioning complaints by the Commission and by VPDs, and as required for VPDs, to update such information within ten business days of any changes.”).

¹⁴ 47 CFR § 79.1(m); *Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1488-91, paras. 36-40 (stating that each video programmer shall submit to the Commission a certification that its programming (1) provides closed captioning in compliance with the Commission’s rules and (2) either complies with the caption quality standards of 47 CFR § 79.1(j)(2) or adheres to the Best Practices for video programmers set forth in 47 CFR § 79.1(k)(1)).

¹⁵ See 47 CFR § 79.1(m)(5) (providing that the Commission will publish a notice in the Federal Register announcing the compliance date for the video programmer certification requirements); *Id.* § 79.1(i)(3)(ii) (providing that the compliance date for section 79.1(m) also will apply to the video programmer registration requirements); *Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1510, para. 79 n.279 (directing CGB to “implement the development of one or more web forms (or to expand the existing VPD Registry) for the filing of video programmer contact information and certifications” and to issue a public notice providing “procedures and deadlines for video programmers to file contact information and certifications once the rules go into effect and the Commission’s web site is ready to receive such contact information and certifications”).

¹⁶ 47 U.S.C. § 531(a).

¹⁷ FCC, *Public, Educational, and Governmental Access Channels*, <https://www.fcc.gov/media/public-educational-and-governmental-access-channels-peg-channels> (last visited July 9, 2024).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

that provide programs exclusively over PEG channels.²¹ Although PEG programming is not categorically exempt from captioning, ACM states that the vast majority of PEG channels fall within one or more of the Commission's closed captioning exemption categories, e.g., because the channel produces annual revenue less than \$3,000,000.²² Therefore, ACM reasons, requiring PEG programmers to register and certify would be "needless" if they are exclusively distributing programs on channels that are exempt from captioning under the Commission's rules.²³ According to ACM, more than 1.2 million volunteers and more than 250,000 community groups provide PEG programming in local communities across the United States.²⁴ These include "ordinary citizens and organizations—Cub Scouts, gospel choirs, political candidates, and community groups of every possible type."²⁵ Requiring each PEG program producer to register and certify compliance for its video programming on channels that are themselves exempt, ACM argues, would impose a significant and unnecessary burden on such programmers and needlessly clutter the Commission's registration system.²⁶

9. By Public Notice released January 10, 2017, the Commission requested comment on the ACM Petition.²⁷ Commenters representing municipalities and related PEG channels, as well as the National Association of Telecommunications Officers and Advisors (NATOA), support the petition.²⁸ One commenter – the National Court Reporters Association – opposes the petition.²⁹ Comments also were filed by NCTA – The Internet and Television Association (NCTA) and a coalition of accessibility advocacy and research organizations (AARO).³⁰ Reply Comments were filed by ACM and two commenters.³¹

²¹ See ACM Petition for Waiver of Registration and Certification Requirement, CG Docket No. 05-231, at 1 (filed Aug. 26, 2016), <https://www.fcc.gov/ecfs/document/10825083956243/1> (ACM Petition); ACM Reply Comments at 2; see also Letter from Mike Wassenaar, President & CEO, ACM, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231, at 2 (filed Mar. 28, 2016) (ACM *Ex Parte*). ACM is a national nonprofit membership organization representing PEG access organizations, community media centers, and PEG programmers. ACM Petition at 1.

²² See ACM Petition at 2 & n.3; 47 CFR § 79.1(d)(12). Further, a PEG channel may qualify for a channel-wide captioning exemption based on the type of programming it carries—for example, if all of the channel's programming is in a language other than English or Spanish, or if all of an educational channel's programming is provided by Educational Broadcast Service licensees. See *id.* § 79.1(d)(3), (7). PEG channels also may be granted an individual exemption. See *id.* § 79.1(f).

²³ ACM Petition at 2.

²⁴ *Id.* ACM estimates that in the Washington, DC area alone, there are approximately 3,300 public access program producers on just four of the area's access channels. *Id.*

²⁵ ACM *Ex Parte* at 1.

²⁶ ACM Petition at 2; ACM *Ex Parte* at 1.

²⁷ *Request for Comment; Petition for Waiver of Registration and Certification Requirement of Closed Captioning Rules*, CG Docket No. 05-231, Public Notice, 32 FCC Red 270 (CGB 2017).

²⁸ See Access Chautauqua County TV, Inc., Comments at 1; City of Boston, Massachusetts Comments at 5, 10-11; City of Los Angeles, California, Comments at 7; Community Television Network Comments at 1; Hardwick Community Television Comments at 1; Lynn Community Television, Inc., Comments at 1; MetroEast Community Media Comments at 1; Northampton Community Television Comments at 1; Provincetown Community Television Comments at 1; Raleigh Television Network Comments at 1; Sacramento Metropolitan Cable Television Commission (MCTC) Comments at 3-6; NATOA Comments at 1; see also E. Puanani Ford Comments at 1.

²⁹ The National Court Reporters Association (NCRA) Comments at 1 (contending that suspending the certification requirement for video programmers may cause captioning quality to falter across PEG channels).

³⁰ NCTA Comments; Comments of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association of the Deaf (NAD), Hearing Loss Association of America (HLAA), Association of Late-Deafened Adults, Cerebral Palsy and Deaf Organization, California Coalition of Agencies Serving the Deaf and Hard of

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D. Non-Broadcast Network Programming

10. In its comments on the ACM Petition, NCTA requests a clarification that video program owners (VPOs)³² of individual programs included in linear program networks distributed by MVPDs need not register or certify compliance with the captioning rules—or alternatively, that such obligations are waived if the non-broadcast network itself certifies compliance with the captioning rules.³³ NCTA reasons that the programmer certification requirement was intended to address a potential gap in captioning responsibility in cases where owners of video programming may distribute programming themselves and possess a right to license the programming to third parties; and no such gap arises when the non-broadcast network itself certifies compliance with the captioning rules.³⁴ Accordingly, NCTA suggests that a program-by-program certification or registration for each program licensed to a network for distribution by an MVPD is unnecessary.³⁵ NCTA adds that under current Commission rules, cable operators and other MVPDs remain primarily responsible for the provision of closed captioning on the programming they distribute, and they should be able to rely on certifications filed with the Commission by video programmers.³⁶ NCTA maintains that if cable operators and other MVPDs “must ensure that the producer of each licensed program on the hundreds of networks that cable operators carry everyday must have filed its own certifications, [they] would have no realistic way to protect themselves against liability.”³⁷

III. DISCUSSION

11. We propose to amend our rules to provide that the closed-caption registration and certification requirements do not apply to any video programmer that provides video programming exclusively to PEG channels that are exempt on a channel-wide basis (under either a self-implementing exemption or the economic-burden exemption)³⁸ and for which exemption certifications have been filed by the channel administrator.³⁹ We believe this proposed modification, if adopted, may address the

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Hearing, National Association of State Agencies of the Deaf and Hard of Hearing, Deaf and Hard of Hearing Consumer Advocacy Network, and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (AARO Comments).

³¹ ACM Reply Comments; AARO Reply Comments; Falmouth Community Television Reply Comments.

³² Under the Commission’s rules, a “video program owner” is “[a]ny person or entity that either: (i) [l]icenses video programming to a video programming distributor or provider that is intended for distribution to residential households; or (ii) [a]cts as the video programming distributor or provider and also possesses the right to license linear video programming to a video programming distributor or provider that is intended for distribution to residential households.” 47 CFR § 79.1(a)(12). *See also Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1475, para. 12 (explaining that video programmers include all VPOs).

³³ NCTA Comments at 1, 3 (rec. February 9, 2017).

³⁴ *Id.* at 3 (further maintaining that “to require *in addition* certification from each program licensed for airing on that network would impose needless paperwork obligations on the numerous suppliers that contribute to the thousands of hours of programming shown daily on hundreds of non-broadcast networks”).

³⁵ *Id.*

³⁶ *Id.* at 4.

³⁷ *Id.* at 5.

³⁸ *See* 47 CFR § 79.1(d) (listing thirteen self-implementing closed captioning exemptions); *id.* § 79.1(f) (setting forth procedures for a video programming provider, producer, or owner to petition the Commission for a full or partial exemption from the closed captioning requirements upon a finding that the closed captioning requirements would be economically burdensome).

³⁹ The term “administrator” in this Further Notice of Proposed Rulemaking (Further Notice) refers to any entity that files a certification regarding all the programming on a PEG channel. Such an entity, for example, might be a cable

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concerns expressed in the ACM Petition, rendering the requested waiver unnecessary. Therefore, we defer ruling on that petition. We also seek comment on the extent to which cable operators or other PEG channel administrators would be able, if they chose, to file accurate certifications of captioning compliance or exemption for the programming carried on non-exempt PEG channels, i.e., those PEG channels that do not qualify for a channel-wide exemption. Finally, we propose to amend the captioning rules to provide that the registration and certification requirements do not apply to any video programmer that only licenses video programming to a nonbroadcast network for distribution by a cable operator or other MVPD,⁴⁰ if such network has registered and certified to the Commission that (1) the network itself is exempt or (2) all the programming comprising its linear line-up is either compliant with captioning obligations or exempt.⁴¹

A. Registration and Certification – PEG Channels

12. *Exempt PEG Channels.* We tentatively conclude that the purpose of our captioning rules—to ensure the accessibility of all video programming for which an exemption from captioning is not warranted⁴²—is not served by requiring video programmers to file registrations and certifications if their programs are distributed exclusively on exempt PEG channels for which an exemption certification has been filed. The record indicates that most PEG programs are exhibited on PEG channels that are themselves exempt from the Commission’s captioning rules,⁴³ and for which an exemption certification could be filed by the channel administrator. Requiring that PEG programmers also certify to the same exemptions, ACM and others contend, would result in the filing of redundant exemption certifications by thousands of PEG programmers.⁴⁴ A number of commenters point out that this would be burdensome and would serve no useful purpose.⁴⁵ So long as the PEG channel administrator files the required contact information and a certification attesting to the channel’s exemption from the captioning rules, the record to date suggests that consumers will have access to the information intended by the certification requirement,⁴⁶ and that the Commission will have sufficient documentation to ensure accountability for compliance with its rules.⁴⁷ We seek comment on our tentative conclusion and its underlying rationale.

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operator, a public access channel administrator designated by the franchising authority, an educational institution, or a local government body. *See supra* para. 7.

⁴⁰ This Further Notice does not address certification filings by broadcast stations because these stations are not required to make such filings for video programming that they broadcast on their stations. 47 CFR § 79.1(m)(4).

⁴¹ Commission rules require that such a certification also must specify each category of exemption purported to apply. *Id.* § 79.1(m)(2)-(3).

⁴² *See, e.g.*, 47 U.S.C. § 613(b).

⁴³ *See* ACM Petition at 2 & n.3; NATOA Comments at 1.

⁴⁴ *See supra* para. 6; *see also generally* Letter from Blake E. Reid on behalf of TDI, NAD, HLAA, and Gallaudet University’s Technology Access Program (TAP), to Marlene H. Dortch, Secretary, FCC, CG Docket No. 05-231, at 1 (filed Apr. 4, 2016) (TDI, NAD, HLAA, and TAP *Ex Parte*).

⁴⁵ AARO Comments at 1; NATOA Comments at 1; Sacramento Comments at 3-5 (stating that “[r]equiring community members, such as independent producers, non-profit organizations, and other municipal entities, who use [Sacramento’s] channels [(that are exempt)] to register with the FCC and certify that they are exempt from captioning requirements would be cumbersome” and “will not help consumers”); *see also* Community Television Network Comments at 1 (requesting that as long as their two channels are exempt, and they file the required documentation, “any program producer who submits a program for air on [their] channels be covered under that exemption and not be required to register individually”).

⁴⁶ *See* 47 CFR § 79.1(i) (requiring the submission of specified contact information); *id.* § 79.1(m)(3) (requiring that certifications claiming exemption from captioning must specify each category of exemption claimed).

13. If the rules are amended as we propose, we anticipate that most administrators of exempt PEG channels will certify as to the channel's exempt status. We seek comment on this expectation. In instances where a channel administrator does not register and certify, we do not propose to relieve individual video programmers of their obligations to comply with the registration and certification requirements.

14. *Non-Exempt PEG Channels.* We also seek comment on whether there are circumstances in which video programmers whose programs are carried on *non-exempt* PEG channels should be relieved from registration and certification obligations.⁴⁸ Specifically, are there instances in which the administrator of a non-exempt PEG channel would have the ability to certify that all the programming carried on the channel is either compliant with or exempt from captioning obligations, thereby making it unnecessary for the individual programmers to provide certifications? We note that, because section 611(e) of the Act bars a cable operator from exercising editorial control over PEG channels,⁴⁹ Commission rules do not require cable operators to *provide* closed captioning for PEG channel programming.⁵⁰ Where a PEG channel is administered by a cable operator, we seek comment on the extent to which, consistent with section 611(e) of the Act and our rules, a cable operator would be able to make accurate *certifications* of captioning compliance for video programming distributed on non-exempt PEG channels. Are other PEG channel administrators—such as government agencies, educational institutions, and designees of franchising authorities—able, as a factual matter, to make accurate certifications as to the exemption or captioning compliance of programming carried on non-exempt PEG channels? Do public interest considerations weigh in favor of or against the Commission relying on such certifications by cable operators or other administrators of non-exempt PEG channels? To the extent that the administrators of non-exempt PEG channels are able and willing to make such certifications, should the Commission amend its rules to relieve video programmers from filing duplicative certifications (as well as registration information) in such cases?⁵¹

15. *Effect on Caption Quality.* We seek comment on whether, and if so how, our proposed rule amendments would affect the quality of closed captioning on exempt and non-exempt PEG channels. We further request that all commenters identify costs and benefits to support their positions. We note a commenter's concern that captioning quality on PEG channels will "falter" if individual PEG video programmers are relieved from registration and certification obligations.⁵² However, we do not propose

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⁴⁷ See AARO Reply Comments at 4 (asking the Commission to ensure that any action taken maintains the Commission's ability to enforce the captioning rules). Under our proposal, the PEG channel administrator would be responsible for the truthfulness of its certification.

⁴⁸ A non-exempt PEG channel is a PEG channel that does *not* qualify on a channel-wide basis for a categorical or individual exemption based on its revenues or the type of programming it carries. See *supra* para. 4.

⁴⁹ 47 U.S.C. § 531(e) ("Subject to [47 U.S.C. § 544(d)], a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.").

⁵⁰ 47 CFR § 79.1(e)(9) ("Video programming distributors shall not be required to provide closed captioning for video programming that is by law not subject to their editorial control, including but not limited to . . . public access, governmental and educational access programming carried pursuant to section[] 611 . . . of the Communications Act. . . . To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.").

⁵¹ To be clear, we are not proposing to *require* that cable operators or other PEG channel administrators submit certifications regarding any PEG channels or PEG channel programming; rather, we seek comment on the extent to which such certifications are feasible—i.e., whether they could be accurately made, on a *voluntary* basis, to ease a regulatory burden that, under the current rules, would fall on producers of video programming carried on non-exempt PEG channels—and on whether to modify our rules to permit this.

⁵² NCRA Comments at 1.

any change in any video programmer's substantive captioning obligations for non-exempt programming.⁵³ Further, as noted above, if the administrator of a PEG channel does not certify to the compliance or exemption of all programming on the channel, the providers of such programming would remain subject to the registration and certification requirements.⁵⁴

B. Registration and Certification— Nonbroadcast Network Programming

16. We tentatively conclude that closed captioning registration and certification requirements should not apply to video programmers that provide or license video programming exclusively to a nonbroadcast network⁵⁵ for distribution by a cable operator or other MVPD if such network has filed registration information and a certification with the Commission indicating that (1) the network itself is exempt or (2) all programming comprising its linear line-up is compliant with or exempt from captioning obligations.⁵⁶ We believe this proposal would effectively address the concerns raised by NCTA in comments on the ACM Petition.⁵⁷ As an example, if the proposed rules are adopted, a food or sports network would continue to have an obligation to register with the Commission and certify the overall compliance of their programming with the captioning rules—or with applicable exemptions therefrom. However, the individual programmers that provide programs shown on these networks—such as baking shows and cooking contests in the case of a food network, and football and baseball games in the case of a sports network—would not be obligated to make these filings so long as their networks meet their own filing requirements.

17. Nonbroadcast networks are themselves “video programmers” under our captioning rules.⁵⁸ Therefore, after the compliance date for registration and certification by video programmers, each nonbroadcast network must register with the Commission and annually certify either that the network itself is exempt or that each of the programs comprising its channel line-up is compliant with (or exempt from) the captioning rules.⁵⁹ As the Commission concluded in the *Closed Captioning Responsibilities*

⁵³ Accordingly, each such video programmer must either qualify individually for an exemption or provide closed captions. 47 CFR § 79.1(b). We also note that even if a PEG channel is exempt under the Commission's rules, PEG channel administrators and the associated video programmers may still have obligations under other federal laws, such as the Americans with Disabilities Act, to make their video programming accessible to individuals with disabilities. *1997 Closed Captioning Report and Order*, 13 FCC Rcd at 3342, para. 143 n.534 (noting that the Commission does not intend that its rules preclude or supersede the operation of any other federal laws that may require an entity exempt from section 713 to make its video programming services accessible to people with disabilities); AARO Reply Comments at 4-5.

⁵⁴ See AARO Comments at 2 (asking the Commission to limit any exemption from the certification rules to programming on PEG channels that are exempt from the captioning rules, to prevent any implication that all PEG channel programming is categorically exempt from these obligations); ACM Petition at 2.

⁵⁵ Nonbroadcast networks are those networks whose programming is delivered via MVPDs, such as cable systems or satellite services. We include local and regional cable channels, such as local and regional cable news and sports channels, within the meaning of the term “nonbroadcast networks.” See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, 32 FCC Rcd 568, Appendices C, D (MB 2017). We do not include PEG channels within the meaning of the term “nonbroadcast networks.”

⁵⁶ Conversely, if a nonbroadcast network does not certify that it is itself fully exempt, or that each of the programs comprising its channel line-up is in compliance with, or exempt from, the closed captioning obligations, each video programmer that provides programming on such network will remain subject to the registration and certification requirements.

⁵⁷ NCTA Comments at 3-5.

⁵⁸ See 47 CFR § 79.1(a)(9) (defining “video programmer” as “[a]ny entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming”).

Order, these nonbroadcast networks must identify the categories of exemptions that are claimed, although they need not provide specific details, such as the names and timeslots for each such program.⁶⁰

18. In light of these existing registration and certification requirements for nonbroadcast networks, we tentatively conclude that it would be unnecessarily duplicative for potentially thousands of program owners that supply programming exclusively to nonbroadcast networks to also register and file annual certifications with the Commission for the same programming addressed in the networks' filings.⁶¹ It appears that such redundant certifications would impose significant and unnecessary regulatory burdens.⁶² We seek comment on our tentative conclusion and its underlying rationale. Will the registration and certifications made by nonbroadcast networks provide the necessary information for consumers and the Commission to ensure accountability with and enforcement of Commission rules?⁶³ Commenters should discuss the costs and benefits of any advocated approach.

19. *Digital Equity and Inclusion*. The Commission, as part of its continuing effort to advance digital equity for all,⁶⁴ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations⁶⁵ and benefits (if any) that may be associated with the issues discussed herein. Specifically, we seek comment on how any Commission actions taken to address barriers to the distribution of independent and diverse programming may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

IV. PROCEDURAL MATTERS

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

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⁵⁹ *Id.* § 79.1(i)(3), (m); *Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1488-91, 1510-13, paras. 36-40, 79-83.

⁶⁰ *Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1488-89, para. 36 n.141.

⁶¹ NCTA Comments at 3.

⁶² *Id.* at 2 (maintaining that a "requirement for individual producers of programs aired on channels to register and certify with the Commission would impose significant and unnecessary burdens on those producers"); *see also* AARO Reply Comments at 3 (agreeing with NCTA that the rules on caption quality "are amenable to a broad reading that could impose a program-to-program certification on non-PEG programming" but urging that it would not be "appropriate or procedurally proper" for the Commission to change the certification rule without notice and the development of a fuller record).

⁶³ *See* AARO Reply Comments at 4 (asking the Commission to ensure that any action taken maintains the Commission's ability to enforce the captioning rules).

⁶⁴ Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

⁶⁵ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

24121 (1998).

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

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

22. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).⁶⁷ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

23. *Regulatory Flexibility Act.* With respect to this Further Notice, an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix C. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the requirements proposed in the Further Notice. The Commission will send a copy of the Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

⁶⁶ See 47 CFR §§ 1.1200 *et seq.*

⁶⁷ *Id.* § 1.1206(b).

24. *Paperwork Reduction Act Analysis.* This Further Notice may result in a new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995.⁶⁸ In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁶⁹

25. *Further Information.* For further information regarding the Further Notice of Proposed Rulemaking, contact Joshua Mendelsohn, CGB, Disability Rights Office, (202) 559-7304, e-mail Joshua.Mendelsohn@fcc.gov.

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 613, this Further Notice of Proposed Rulemaking IS ADOPTED.

27. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁸ Pub. L. No. 104-13, 109 Stat. 163 (1995), *codified at* 44 U.S.C. §§ 3501-3520.

⁶⁹ 44 U.S.C. § 3506(c)(4).

APPENDIX A**List of Commenters on Alliance for Community Media (ACM) Petition****Initial Comments** (received Feb. 9, 2017, except as noted)

Access Chautauqua County TV, Inc. (rec. Jan. 17, 2017)

City of Boston, Massachusetts

City of Los Angeles, California

Community Television Network (rec. Jan. 17, 2017)

E. Puanani Ford (volunteer producer of PEG programming)

Hardwick Community Television (filed by Leif Goldberg) (rec. Feb. 6, 2017)

Lynn Community Television, Inc. (filed by David Riley Jr.)

MetroEast Community Media (filed by Martin C. Jones) (rec. Jan. 18, 2017)

National Association of Telecommunications Officers and Advisors (NATOA)

National Court Reporters Association (filed by Michael Nelson and Matthew Barusch)

NCTA – The Internet & Television Association (NCTA)

Northampton Community Television (rec. Jan. 13, 2017)

Provincetown Community Television (filed by Amy Davies) (rec. Feb. 6, 2017)

Raleigh Television Network

Sacramento Metropolitan Cable Television Commission (MCTC)

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Hearing Loss Association of America, Association of Late-Deafened Adults, Cerebral Palsy and Deaf Organization, California Coalition of Agencies Serving the Deaf and Hard of Hearing, National Association of State Agencies of the Deaf and Hard of Hearing, Deaf and Hard of Hearing Consumer Advocacy Network, and Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University (AARO)

Reply Comments on ACM Petition (received Feb. 24, 2017, except as noted)

ACM

AARO

Falmouth Community Television (filed by Debra Rogers) (rec. Feb. 17, 2017)

APPENDIX B

Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

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

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

2. Amend section 79.1 by redesignating paragraphs (a)(6) through (a)(13) as paragraphs (a)(7) through (a)(14) and adding new paragraphs (a)(6), (i)(3)(iii), and (m)(6) to read as follows:

§ 79.1 Closed captioning of televised video programming.

* * * * *

(a) * * *

(6) *Nonbroadcast Network.* Networks whose programming is delivered via multichannel video programming distributors. Local and regional cable channels are included within the meaning of the term nonbroadcast networks.

* * * * *

(i) * * *

(3) * * *

(iii) Video programmers shall not be required to file contact information with the Commission pursuant to paragraph (i)(3)(ii) of this section if they provide video programming exclusively to a public, educational, or governmental (PEG) access channel, as described in section 531 of title 47 of the United States Code, or a nonbroadcast network, for which the administrator of the PEG access channel or nonbroadcast network has on file with the Commission:

(A) the contact information required by paragraph (i)(3)(ii); and

(B) a certification pursuant to paragraph (m) of this section attesting to:

(1) an exemption from the captioning rules for the nonbroadcast network or PEG channel itself; or

(2) compliance with, or exemption from, the captioning rules for the entire programming line-up of the nonbroadcast network or PEG channel itself.

* * * * *

(m) * * *

(6) Video programmers shall not be required to submit certifications to the Commission pursuant to this paragraph (m) if they provide video programming exclusively on a public, educational, or governmental (PEG) access channel, as described in section 531 of title 47 of the United States Code, or a nonbroadcast network, for which the administrator of the PEG access channel or nonbroadcast network has on file with the Commission:

(A) the contact information required by paragraph (i)(3)(ii); and

(B) a certification pursuant to this paragraph (m) attesting to:

(1) an exemption from the captioning rules for the nonbroadcast network or PEG channel itself; or

(2) compliance with, or exemption from, the captioning rules for the entire programming line-up of the nonbroadcast network or PEG channel itself.

APPENDIX C

Initial Regulatory Flexibility Analysis

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

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

2. Since the inception of the Commission's closed captioning rules, the Commission has assigned primary responsibility for the *provision* of closed captioning on television programming to video programming distributors (VPDs).⁴ The Commission allows each VPD to satisfy this responsibility by ensuring that each video programmer whose programming it carries has certified its compliance with the Commission's closed captioning rules.⁵ However, Commission rules also hold video programmers responsible for a lack of captions where they fail to provide captions on non-exempt programs.⁶

3. In the *Closed Captioning Responsibilities Order*, adopted in 2016, the Commission amended its rules to assign responsibility for the *quality* of closed captioning to VPDs and video programmers, with each entity responsible for closed captioning issues that are primarily within its control.⁷ To ensure compliance with its rules and simplify the existing video programmer certification process, the Commission revised its rules to require each video programmer to annually file with the Commission a certification that the video programmer's programming: (a) is in compliance with the rules requiring the inclusion of closed captions, and either is in compliance with the captioning quality standards or has adopted and is following related Best Practices; or (b) is exempt from the captioning obligations, in which case the video programmer must specify the specific exemptions claimed.⁸ In addition, so that the video programmers' contact information is readily available to the Commission and

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272, 3286-87, paras. 27-29 (1997), *recon. granted in part*, Order on Reconsideration, 13 FCC Rcd 19973 (1998). A VPD is "[a]ny television broadcast station licensed by the Commission and any multichannel video programming distributor . . . and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission." 47 CFR § 79.1(a)(11).

⁵ *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc., Petition for Rulemaking*, CG Docket No. 05-231, Second Report and Order, 31 FCC Rcd 1469, 1492-93, para. 42 (2016) (*Closed Captioning Responsibilities Order*). A video programmer is "[a]ny entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming." 47 CFR § 79.1(a)(9).

⁶ *Closed Captioning Responsibilities Order*, 31 FCC Rcd at 1484-86, paras. 28-31.

⁷ *Id.* at 1478-84, paras. 17-26.

⁸ *Id.* at 1488, para. 36.

to VPDs for the expedient and effective handling and resolution of consumer complaints, the Commission adopted rules requiring each video programmer to register with the Commission the contact information for the person responsible for captioning issues and ensuring compliance with the Commission's rules.⁹

4. In the Further Notice, the Commission proposes to modify the video programmer registration and certification requirements adopted by the Commission in the *Closed Captioning Responsibilities Order* by not applying those requirements to video programmers that (1) provide video programming exclusively to public, educational, and governmental access channels (PEG channels) that are exempt from the provision of closed captioning pursuant to section 79.1(d) or (f) of the Commission's rules or certify compliance with, or exemption from, the closed captioning obligations for all programming shown over the PEG channel itself;¹⁰ or (2) provide or license video programming to nonbroadcast networks for distribution by a cable operator or other MVPD, to the extent that such networks certify that the network itself is exempt or certify compliance with, or exemption from, the closed captioning obligations for all programming comprising the network's linear line-up. The purpose of this proposed rule change is to relieve providers of video programming to cable or other multichannel systems from the obligation to register with the Commission and to certify captioning compliance if the relevant certification has been filed by another competent entity.

B. Legal Basis

5. The proposed action is authorized under Sections §§ 151, 154(i), 154(j), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), and 613.

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

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.¹¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹³ A "small business concern" is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁴ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

⁹ *Id.* at 1510, para. 79.

¹⁰ 47 CFR § 79.1(d), (f).

¹¹ 5 U.S.C. § 603(b)(3).

¹² *Id.* § 601(6); *see also id.* § 601(4) (defining "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register"); *id.* § 601(5) (defining "small governmental jurisdiction" as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register").

¹³ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

¹⁴ 15 U.S.C. § 632(a)(1)-(2)(A).

7. *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 broad groups of small entities that could be directly affected herein.¹⁵ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁶ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹⁷ Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁸ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁹ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.²⁰ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²¹ U.S. Census Bureau data from the 2017 Census of Governments²² indicate that there were 90,075 governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²³ Of this number, there were 36,931 general purpose governments

¹⁵ See 5 U.S.C. § 601(3)-(6).

¹⁶ See SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

¹⁷ *Id.*

¹⁸ See 5 U.S.C. § 601(4).

¹⁹ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field

²⁰ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

²¹ 5 U.S.C. § 601(5).

²² See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

²³ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See Table 2. CG1700ORG02 Table Notes Local Governments by Type and State_2017.

(county,²⁴ municipal and town or township²⁵) with populations of less than 50,000, and 12,040 special purpose governments - independent school districts²⁶ with enrollment populations of less than 50,000.²⁷ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁸

8. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.²⁹ The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.³⁰ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.³¹ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.³² Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.³³ Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.³⁴ Based on this data, the

²⁴ See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁵ See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁶ See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes Special Purpose Local Governments by State Census Years 1942 to 2017.

²⁷ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁸ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²⁹ See U.S. Census Bureau, 2017 NAICS Definition, “515210 Cable and Other Subscription Programming,” <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

³⁰ *Id.*

³¹ *Id.*

³² See 13 CFR § 121.201, NAICS Code 515210.

³³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The U.S. Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

³⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing

(continued....)

Commission estimates that a majority of firms in this industry are small.

9. *Motion Picture and Video Production.* This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.³⁵ The SBA small business size standard for businesses operating this industry classifies firms with annual receipts of \$35 million or less as small.³⁶ U.S. Census Bureau data for 2017 show that there were 8,921 firms in this industry that operated for the entire year.³⁷ Of that number, 8,767 firms had revenue of less than \$25 million per year.³⁸ Based on this data, we conclude that the majority of firms operating in this industry are small.

10. *Closed Captioning Services.* These entities may be affected by our action. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, “Teleproduction and Other Postproduction Services” and “Court Reporting and Stenotype Services.”

11. *Closed Captioning Services – Teleproduction and Other Postproduction Services.* This industry comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects.³⁹ Examples of establishments and firms in this industry include those associated with the provision of filmed or taped closed captioning.⁴⁰ The SBA small business size standard for this industry classifies a business as small if it has \$34.5 million or less in annual receipts.⁴¹ U.S. Census Bureau data for 2017 show that there were 1,691 firms in this industry that operated for the entire year.⁴² Of this number, 541 firms had revenue of less than \$25 million.⁴³ Based on this information, we conclude that the majority of firms in this industry are small entities.

(Continued from previous page) _____
data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “512110 Motion Picture and Video Production,” <https://www.census.gov/naics/?input=512110&year=2017&details=512110>.

³⁶ See 13 CFR § 121.201, NAICS Code 512110.

³⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 512110, <https://data.census.gov/cedsci/table?y=2017&n=512110&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “512191 Teleproduction and Other Postproduction Services,” <https://www.census.gov/naics/?input=512191&year=2017&details=512191>.

⁴⁰ *Id.*

⁴¹ See 13 CFR § 121.201, NAICS Code 512191.

⁴² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 512191, <https://data.census.gov/cedsci/table?y=2017&n=512191&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, \$100,000 to \$249,999, \$250,000 to \$499,999, \$5,000,000 to \$9,999,999 to avoid disclosing data for individual companies (see

(continued...)

12. *Closed Captioning Services – Court Reporting and Stenotype Services.* This industry comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials.⁴⁴ Examples of establishments and firms in this industry include court reporting or stenotype recording services; real-time (i.e., simultaneous) closed captioning of live television performances, meetings, conferences; and public stenography services.⁴⁵ The SBA small business size standard for this industry classifies a business as small if it has \$16.5 million or less in annual receipts.⁴⁶ U.S. Census Bureau data for 2017 show that there were 2,445 firms in this industry that operated for the entire year.⁴⁷ Of this number, approximately 1,627 firms had revenue of less than \$10 million.⁴⁸ Based on this information, we estimate that the majority of Court Reporting and Stenotype Services firms are small entities.

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

13. The Further Notice proposes to amend the rules to not apply registration and certification requirements to those video programmers that (1) provide video programming exclusively to PEG access channels that are exempt from the provision of closed captioning pursuant to section 79.1(d) or (f) of the Commission’s rules or certify compliance with or exemption from, the closed captioning obligations for all programming shown over the PEG channel itself; or (2) provide or license video programming to nonbroadcast networks for distribution by a cable operator or other MVPD, to the extent that such networks certify that the network itself is exempt or certify compliance with, or exemption from, the closed captioning obligations for all programming comprising the network’s linear line-up.

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

14. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”⁴⁹ Such alternatives may include the following four alternatives (among others): “(1) the

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Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴⁴ See U.S. Census Bureau, *2017 NAICS Definition, “561492 Court Reporting and Stenotype Services,”* <https://www.census.gov/naics/?input=561492&year=2017&details=561492>.

⁴⁵ *Id.*

⁴⁶ See 13 CFR § 121.201, NAICS Code 561492.

⁴⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 561492, <https://data.census.gov/cedsci/table?y=2017&n=561492&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁴⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴⁹ 5 U.S.C. § 604(a)(6).

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 such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”⁵⁰

15. In proposing to amend the Commission’s closed captioning rules, the Commission believes that it will minimize the effect on small entities while continuing to make television programming accessible to persons who are deaf and hard of hearing. By proposing to amend the rules to not apply the registration and certification requirements to those video programmers that (1) provide video programming exclusively to PEG access channels that are exempt from the provision of closed captioning pursuant to section 79.1(d) or (f) of the Commission’s rules or certify compliance with, or exemption from, the closed captioning obligations for all programming shown over the PEG channel itself; or (2) provide or license video programming to nonbroadcast networks for distribution by a cable operator or other MVPD, to the extent that such networks certify compliance with, or exemption from, the closed captioning obligations for all programming comprising the network’s linear line-up, or certify that the network itself is exempt, the Commission would relieve many entities, including small entities, from this reporting requirement. Thus, the Further Notice proposes an amendment to the rules that would exclude coverage of the rule for many entities, including small entities, under certain circumstances.

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

16. None.

⁵⁰ See *id.* § 603(c).