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(m) Related Information

(1) For ANAC AD 2022–02–01, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email pac@anac.gov.br; internet www.anac.gov.br/en/. You may find this ANAC AD on the ANAC website at <https://sistemas.anac.gov.br/certificacao/DA/DAE.asp>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at www.regulations.gov by searching for and locating Docket No. FAA–2022–0979.

(2) For more information about this AD, contact Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email krista.greer@faa.gov.

(3) For Embraer service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São José dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email distrib@embraer.com.br; internet www.flyembraer.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 21, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–16098 Filed 7–27–22; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 22–239; FCC 22–55; FR ID 98231]

Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on referencing a new publication for use in determining a television station's designated market area (DMA) for satellite and cable carriage under the Commission's regulations. The current rules require television broadcasters, cable operators, and satellite carriers to determine DMA for carriage election and other purposes by reference to the Nielsen Station Index Directory (Annual Station Index) in combination with the United States Television Household Estimates (Household Estimates), or a successor publication. Nielsen Media Research no longer publishes the Annual Station Index and has replaced it with a monthly Local TV Station Information Report (Local TV Report), which is now the only publication necessary to determine a station's DMA. The Household Estimates publication is no longer in use. First, the Commission seeks comment on whether we should revise our rules to identify the Local TV Report as the successor publication to the Annual Station Index to be used to determine a station's DMA. Second, because the Local TV Report is published monthly rather than yearly as the Annual Station Index, we seek comment on which Local TV Report should be used for carriage election.

DATES: Comments are due on or before August 29, 2022; reply comments are due on or before September 26, 2022.

ADDRESSES: You may submit comments, identified by MB Docket No. 22–239, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://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 commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.¹

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Kenneth Lewis, Kenneth.lewis@fcc.gov, of the Media Bureau, Policy Division, (202) 418–2622. Direct press inquiries to Janice Wise at (202) 418–8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), MB Docket No. 22–239, adopted on July 14, 2022 and released July 14, 2022. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at <https://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. In this Notice of Proposed Rulemaking, we seek comment on referencing Nielsen's Local TV Station Information Report (Local TV Report) for use in determining a television station's designated market area (DMA)

¹ FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OMD 2020). See <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

for satellite and cable carriage under the Commission's regulations. The Nielsen Company has notified the Commission that its Nielsen Media Research division will no longer publish the annual Nielsen Station Index Directory (Annual Station Index), which has been used in combination with the Nielsen Station Index and United States Television Household Estimates (Household Estimates), to determine a station's DMA for local television stations seeking carriage. Nielsen has stated that the information contained in the Annual Station Index is now in the Local TV Report, which is published monthly. Thus, the Local TV Report is now the only publication necessary to determine a station's DMA. The Household Estimates publication is no longer in use. In the discussion below, we tentatively conclude that we should revise our rules to identify the Local TV Report as the successor publication to be used to determine a station's DMA. However, the Local TV Report excludes low-power and Class A stations that fail to meet its de minimis audience threshold, but Nielsen is able to generate upon request for subscribers a report that contains all low-power and Class A stations. Although DMA determinations are not relevant for low-power and Class A station carriage, we ask whether a Nielsen generated report containing all low-power and Class A station upon request of subscribers is sufficient, or whether there are other publications that could publicly provide this information?

II. Background

2. Pursuant to the Act, and the implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their market. Similarly, section 338 of the Act requires satellite carriers to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license. A station's market for cable and satellite carriage is its DMA, as defined by The Nielsen Company's Annual Station Index and Household Estimates "or any successor publications." The implementing regulations also specify which edition of the Annual Station Index is to be used for each election cycle (specifically, the one published the year prior to the election).

3. The Nielsen Company informed the Commission in a letter that the Annual Station Index would no longer be published and that it would be replaced

with the Local TV Report that generally contains the same information as the Annual Station Index and is simply published monthly rather than annually. However, Nielsen also stated that one noted difference between the Annual Station Index and the Local TV Report is that the latter includes low-power and Class A television stations only if they reach a de minimis average audience size threshold. Nielsen also informed the Commission that the Household Estimates publication is no longer in use.

III. Discussion

4. As an initial matter, we seek comment on whether the rule should be amended to reference the Local TV Report as the successor to the Annual Station Index and Household Estimates for purposes of determining DMA for carriage elections. We also seek comment on whether the October Local TV Report published two years prior to each triennial carriage election should be used to allow for an apples-to-apples comparison with the data from the Annual Station Index. Or, alternatively, should we consider a Local TV Report that is published closer in time to each triennial carriage election?

5. As previously noted above, the Local TV Report includes low-power and Class A television stations only if they meet a certain de minimis average audience size threshold. As also noted, DMA is not relevant for low-power and Class A carriage. Nevertheless, the omission of all low-power and Class A stations from the Local TV Report is a change from the Annual Station Index. However, Nielsen has stated that it still gathers this information for all television stations and can generate a report upon request for subscribers that would include all low-power and Class A stations other than those already identified in the Local TV Report.² We seek comment on whether Nielsen's generation of a report at the request of subscribers is sufficient? If obtaining any necessary information from Nielsen in this manner is not sufficient, are there other publications that could publicly provide this information? We also seek comment on any other differences between Nielsen's Station Index Directory and Local TV Report that we should take into account as we update these rules?

6. We further seek comment on whether there are any other rules that we should consider updating in light of Nielsen's publication changes? Although we note that the Commission's carriage election rules

discussed herein appear to be the only Commission rules that expressly reference the Annual Station Index and Household Estimates, changing how we determine DMA in this context will impact other statutory and rule provisions relating to carriage.³ We tentatively conclude that the publication or publications ultimately selected in this proceeding will also be used to define "local market" as contemplated in these other statutory provisions and rules. We seek comment on this tentative conclusion.

IV. Procedural Matters

A. Initial RFA Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of the NPRM. The Commission will send a copy of this entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁵ In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.⁶

1. Need for, and Objectives of, the Proposed Rule Changes.

8. In this Notice of Proposed Rulemaking (NPRM), we seek comment on adoption of a new publication for use in determining a television station's designated market area (DMA) for satellite and cable carriage under the Commission's regulations. The Nielsen Company has notified the Commission that its Nielsen Media Research division will no longer publish an annual Station Index Directory (Annual Station Index). Under our rules, this publication has

³ See, e.g., 47 U.S.C. 325(b)(7)(E) (retransmission consent); 47 U.S.C. 339(d)(1) (carriage of distant signals by satellite carriers); 47 U.S.C. 340(i)(1) (significantly viewed); 47 CFR 76.54(e) (significantly viewed); 47 CFR 76.65(b)(3)(i) (retransmission consent); 47 CFR 73.683(f) (field strength contours). These statutory and rule provisions incorporate or reference the definition of "local market" in either the carriage election rules (see *infra* Appendix A) or 17 U.S.C. 122(j) (see *supra* note 2).

⁴ 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

⁵ 5 U.S.C. 603(a).

⁶ *Id.*

² Nielsen Letter at 2 and Nielsen Letter Addenda.

been used, along with the Nielsen Station Index United States Television Household Estimates (Household Estimates), to determine a station's DMA for local television stations seeking carriage on satellite and cable systems.⁷ The Annual Station Index has been replaced with a monthly Local TV Station Information Report (Local TV Report), which contains all the information necessary to determine a television station's DMA.⁸ We tentatively conclude that we should amend our rules to eliminate reference to the Annual Station Index and the Household Estimates and instead determine DMA assignments for carriage purposes by reference to the Local TV Report, and seek comment on this tentative conclusion. We also seek comment on whether we should direct parties to refer to the Local TV Report published in the October two years prior to each triennial carriage election, or one published in a different month or year or closer to the time period of the election. We seek to amend our rules to replace the Annual Station Index and the Household Estimates with a "successor publication" that is consistent with the Act and our rules and that provides similarly useful information for parties engaged in the retransmission consent-mandatory carriage election cycle.

2. Legal Basis

9. The proposed action is authorized pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 303, 325, 335, 338, 339, 340, 403, 534.

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

10. The RFA directs agencies to provide a description of and the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹¹ 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.¹² The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

11. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.¹³ 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.¹⁴ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹⁵ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.¹⁶

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹⁷ U.S. Census

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**.¹⁸ *Id.* § 601(3).

¹² 15 U.S.C. 632(a)(1). Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

¹³ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

¹⁷ See 13 CFR 121.201, NAICS Code 517311.

Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹⁸ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁹ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.²⁰ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.²¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.²² Based on industry data, there are about 420 cable companies in the U.S.²³ Of these, only five have more than 400,000 subscribers.²⁴ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁵ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.²⁶ Of these, about 639 have more than 15,000 subscribers.²⁷ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

14. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator,"

¹⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

¹⁹ *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.

²⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021),

<https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

²¹ *Id.*

²² 47 CFR 76.901(d).

²³ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

²⁵ 47 CFR 76.901(c).

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

²⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

⁷ Letter from Michael Nilsson, Harris, Wiltshire & Grannis LLP, Counsel to the Nielsen Company, to Evan Baranoff, Attorney Advisor, Media Bureau, Policy Division, Federal Communications Commission (Dec. 15, 2021) (Nielsen Letter).

⁸ *Id.*

⁹ 5 U.S.C. 603(b)(3).

¹⁰ *Id.* § 601(6).

¹¹ *Id.* § 601(3) (incorporating the definition of "small business concern" in 15 U.S.C. 632).

Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after

which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²⁸ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.²⁹ Based on industry data, only four cable system operators have more than 677,000 subscribers.³⁰ Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.³¹ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

15. *Direct Broadcast Satellite (“DBS”)* Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or

providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.³² Transmission facilities may be based on a single technology or combination of technologies.³³ 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.³⁴ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³⁵

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁶ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.³⁷ Of this number, 2,964 firms operated with fewer than 250 employees.³⁸ Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.³⁹ DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed

Commission data, in general DBS service is provided only by large firms.

17. *Open Video Services.* The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is “Wired Telecommunications Carriers.”⁴⁰ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.⁴¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴² Of this total, 2,964 firms operated with fewer than 250 employees.⁴³ Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

18. *Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS)⁴⁴ and

²⁸ 47 U.S.C. 543(m)(2).

²⁹ FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (2001 Subscriber Count PN). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to be approximately 48.6 million. See *Communications Marketplace Report*, GN Docket No. 20–60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (2020 Communications Marketplace Report). However, because the Commission has not issued a public notice subsequent to the 2001 Subscriber Count PN, the Commission still relies on the subscriber count threshold established by the 2001 Subscriber Count PN for purposes of this rule. See 47 CFR 76.901(e)(1).

³⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

³¹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. See 47 CFR 76.910(b).

³² See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³³ *Id.*

³⁴ See *id.* Included in this industry are: broadband internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

³⁵ *Id.*

³⁶ See 13 CFR 121.201, NAICS Code 517311.

³⁷ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&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.

³⁹ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

⁴⁰ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴¹ See 13 CFR 121.201, NAICS Code 517311.

⁴² See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?v=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&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.

⁴⁴ BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

Educational Broadband Service (EBS)⁴⁵ to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.⁴⁶ 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.⁴⁷ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁴⁸ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.⁴⁹ Auction 86 concluded in 2009 with the sale of

61 licenses.⁵⁰ Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

19. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined in paragraph 6, *supra*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁵¹ Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.⁵² Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's internal records indicate that as of August 2021, there are 2,451 active EBS licenses.⁵³ The Commission estimates that of these 2,451 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁵⁴

20. *Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange carriers. Wired

Telecommunications Carriers⁵⁵ is the closest industry with a SBA small business size standard.⁵⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁵⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁹ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.⁶⁰ Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.⁶¹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

21. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁶² Wired Telecommunications Carriers⁶³ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired

⁵⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁶ See 13 CFR 121.201, NAICS Code 517311.

⁵⁷ *Id.*

⁵⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017>. EC1700SIZEEMPFFIRM&hidePreview=false.

⁵⁹ *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.

⁶⁰ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁶¹ *Id.*

⁶² Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁶³ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁰ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

⁵¹ 13 CFR 121.201, NAICS Code 517311.

⁵² United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017*, TableID EC1700SIZEEMPFFIRM (2017), <https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017>. EC1700SIZEEMPFFIRM (last visited Aug. 9, 2021).

⁵³ FCC, *Universal Licensing System*, <https://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp> (under "Advanced License Search" option, select "ED—Educational Broadband Service," "Active" and "Regular" License, and "Exclude Leases" to see search results).

⁵⁴ 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).

⁴⁵ EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See *id.*

⁴⁶ 47 CFR 27.1213(a).

⁴⁷ 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

⁴⁸ *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).

⁴⁹ *Id.* at 8296.

Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.⁶⁷ Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.⁶⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."⁶⁹ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁷⁰ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.⁷¹ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.⁷² Of that number, 657 firms

had revenue of less than \$25,000,000.⁷³ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

23. The Commission estimates that as of March 2022, there were 1,373 licensed commercial television stations.⁷⁴ Of this total, 1,280 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,840 LPTV stations and 3,231 TV translator stations.⁷⁵ The Commission however does not compile, and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

24. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations⁷⁶ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television

broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

25. There are also 386 Class A stations.⁷⁷ Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,985 LPTV stations and 3,306 TV translator stations.⁷⁸ Given the nature of these services as secondary and in some cases purely a "fill-in" service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

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

26. The *NPRM* proposes adoption of an amendment to our rules that codifies the fact that Nielsen Media Research no longer publishes the Annual Station Index and has replaced it with the Local TV Report. Parties will be required to reference this commercial publication to determine DMA assignments for stations involved in the carriage election process.

5. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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.⁷⁹

28. These proposals would not impose a negative economic impact on any small entities because they impose no additional obligations on any entities. Commission regulations currently require that the Annual Station Index and Household Estimates "or its successor publication" be used for the purpose of determining a local

⁶⁴ See 13 CFR 121.201, NAICS Code 517311.

⁶⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017>.
EC1700SIZEEMPFFIRM&hidePreview=false.

⁶⁶ *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.

⁶⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId/lic/attachments/DOC-379181A1.pdf>.

⁶⁸ *Id.*

⁶⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "515120 Television Broadcasting," <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

⁷⁰ *Id.*

⁷¹ See 13 CFR 121.201, NAICS Code 515120.

⁷² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017>.
EC1700SIZEREVFIRM&hidePreview=false.

⁷³ *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.

⁷⁴ Broadcast Station Totals as of March 31, 2022, Public Notice, DA 22-365 (rel. April 5, 2022) (*March 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-march-31-2022>.

⁷⁵ *Id.*

⁷⁶ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 121.103(a)(1).

⁷⁷ *Supra* note 60 (discussing broadcast station totals as of March 31, 2021).

⁷⁸ *Id.*

⁷⁹ 5 U.S.C. 603(c).

broadcast station’s DMA. Given that the Annual Station Index will no longer be published by Nielsen, this proceeding will simply identify the “successor publication” parties are already required to consult. Nielsen has stated that the relevant information in the Local TV Report is the same as that previously contained in the Annual Station Index, so the process of accessing the information should not be any more burdensome. The proposed rules therefore will not result in any substantive change in the existing requirements for small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

29. None.

V. Initial Paperwork Reduction Act Analysis

30. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).⁸⁰ In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.⁸¹

A. Ex Parte Rules—Permit-But-Disclose

31. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸² 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

B. Filing Requirements-Comments and Replies

32. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules,⁸³ 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).⁸⁴

VI. Ordering Clauses

33. *It is ordered*, pursuant to the authority found in the Communications Act of 1934, As amended, 47 U.S.C. 151, 152, 154, 303, 325, 335, 338, 339, 340, 403, 534, this Notice of Proposed Rulemaking *is hereby adopted* and *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

34. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television, Communications, Equal employment opportunity, internet, Reporting and recordkeeping requirements, Satellite, and Telecommunications.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

■ 2. Section 76.55 is amended by revising and redesignating paragraph (e)(2) introductory text as paragraph (e)(2)(i) and paragraph (e)(2)(i) as paragraph (e)(2)(ii) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(e) * * *

(2) A commercial broadcast station’s market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Local TV Station Information Report or any successor publications.

(i) The applicable DMA list for the 2023 election pursuant to § 76.64(f) will be the DMA assignments specified in the Nielsen October 2021 Local TV Station Information Report, and so forth using the publications for the October two years prior to each triennial election pursuant to § 76.64(f).

(ii) [Removed and Reserved]

* * * * *

■ 3. Section 76.66 is amended by revising paragraphs (e)(2) and (3) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(e) * * *

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

⁸⁰ The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

⁸¹ The Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). See 44 U.S.C. 3506(c)(4).

⁸² 47 CFR 1.1200 *et seq.*

⁸³ 47 CFR 1.415, 1419.

⁸⁴ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.

(3) A satellite carrier shall use the October 2021 Nielsen Local TV Station Information Report for the retransmission consent-mandatory carriage election cycle commencing on January 1, 2024 and ending on December 31, 2027. The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing

January 1, 2028 and ending December 31, 2030, and so forth using the publications for the October two years prior to each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication, or the Local TV Station Information Report commencing with

October 2021, and every three years thereafter (*i.e.*, October 2024, October 2027, etc.). A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

* * * * *

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