

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

In the Matter of)	
)	EB Docket No. 04-296
Review of the Emergency Alert System)	
)	PS Docket No. 15-94
)	

ORDER ON RECONSIDERATION

Adopted: June 25, 2019

Released: June 27, 2019

By the Commission:

I. INTRODUCTION

1. The Emergency Alert System (EAS) is a national public warning system through which broadcast stations, cable systems and other services, i.e., EAS Participants, are required to deliver alerts to the public to warn them of impending emergencies and dangers to life and property.¹ Proper operation of the EAS is ensured by, among other things, strict adherence to alert message specifications, and testing requirements that apply to different services to verify both the correct distribution of alerts and the operation of EAS Participants' EAS equipment. Direct Broadcast Satellite (DBS) and Satellite Digital Audio Radio Service (SDARS) are two services subject to the EAS requirements.² DBS and SDARS are similarly situated services to the extent both are satellite-delivered services with nationwide footprints that transmit digital programming directly from satellites to subscriber receivers. However, different EAS testing requirements apply to each service, resulting in regulatory disparity. In this Order on Reconsideration (Order), we harmonize the EAS testing requirements that apply to SDARS providers with the testing requirements applied to DBS providers.³ We find that balancing the testing burdens between these two similarly situated services will not compromise the effectiveness of the EAS. We take these actions in response to a petition for partial reconsideration of the *EAS First Report and Order*⁴ filed in 2005 by XM Radio Inc.,⁵ which was subsequently modified by supplemental filings made by Sirius

¹ The Commission's rules define EAS Participants as radio broadcast stations, including AM, FM, and low-power FM stations; Class A television and low-power TV stations; cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. See 47 CFR § 11.11(a).

² See 47 CFR § 11.11(a).

³ See Appendix A.

⁴ *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625 (2005) (*EAS First Report and Order*).

⁵ See Petition for Partial Reconsideration and Clarification of XM Radio Inc., EB Docket No. 04-296 (filed Dec. 27, 2005) (*XM Petition*). Sirius Satellite Radio Inc. (Sirius) filed comments supporting the *XM Petition*. See Sirius Comments (filed March 2, 2006). No other party filed comments or oppositions. Although this petition was originally filed by XM Radio Inc. (XM), that entity subsequently became Sirius XM Radio Inc. when the Commission approved the merger of Sirius Satellite Radio Inc. and XM in August 2008. See *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, MB Docket No. 07-57, 23 FCC Rcd 12348 (2008) (*Sirius-XM Merger Order*).

XM Radio Inc. (Sirius XM).⁶

II. BACKGROUND

A. The EAS

2. As indicated, the EAS is a national public warning system through which alerts concerning impending emergencies are distributed to the public by EAS Participants.⁷ The primary purpose of the EAS is to provide the President with “the capability to provide immediate communications and information to the general public at the national, state and local levels during periods of national emergency.”⁸ The EAS also is used by state and local governments, as well as the National Weather Service (NWS), to distribute alerts.⁹

3. The EAS uses a broadcast-based, hierarchical alert message distribution architecture to deliver alerts to the public. Using this system, the originator of an alert message at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol, a series of numeric codes that provides basic information about the alert.¹⁰ When the transmission of an alert encoded in the EAS Protocol is received by the EAS equipment of EAS Participants assigned to monitor the transmission of the originating broadcaster, the encoded EAS header code tones activate the EAS equipment, which then decodes the numeric codes in the original alert message, re-encodes that information, and broadcasts anew the EAS header code tones, attention signal and audio message to the public. This process is repeated as the alert is rebroadcast to other downstream monitoring EAS Participants until all affected EAS Participants have received the alert and delivered it to the public. This process of EAS alert distribution among EAS Participants is often referred as the “daisy chain” distribution architecture.¹¹

4. To ensure that the EAS system and EAS Participants’ EAS equipment will function properly, and that alerts will be accurately and consistently distributed, delivered to the public, the EAS rules contain national, monthly and weekly testing requirements that apply to different services, including broadcast, cable, DBS and SDARS.¹² The EAS weekly test generally involves EAS Participant

⁶ See Letter from James S. Blitz, Vice President, Regulatory Counsel, Sirius XM Radio Inc., to Marlene H. Dortch, Secretary, FCC, EB Docket 04-296 (filed July 31, 2014) (*July 2014 Ex Parte Letter*); Motion of Sirius XM Radio Inc. for Leave to Supplement Petition for Reconsideration and Request for Limited Waiver, EB Docket No. 04-296 (filed June 5, 2017) (*Sirius XM Motion*), <https://ecfsapi.fcc.gov/file/1060555872521/EAS%20docket%20filing.pdf>; Further Supplement of Sirius XM Radio Inc. to Petition for Reconsideration and Request for Limited Waiver, EB Docket No. 04-296 (filed Sept. 24, 2018) (*Further Supplement*), <https://ecfsapi.fcc.gov/file/10924819802710/SiriusXM%20EAS%20Further%20Supplement%20to%20Recon%20Petition%20FINAL%209.24.18.pdf>; Letter from James S. Blitz, Vice President, Regulatory Counsel, Sirius XM Radio Inc., to Marlene H. Dortch, Secretary, FCC, EB Docket 04-296 (filed Nov. 5, 2018) (*November 2018 Letter*), https://ecfsapi.fcc.gov/file/110571174841/Sirius_XM_Ex_parte_in_04-296_110518_Final_.pdf. The *Sirius XM Motion* included a request for waiver to allow Sirius XM to operate on its Instant Traffic, Weather and Alert channels without having to comply with certain general alert message requirements. See *Sirius XM Motion* at 3-4. The waiver was packaged with reconsideration supplements and clarification requests. Because we accept the pleadings to the extent noted herein and deny the clarification requests, the waiver request remains unresolved and can be handled at the Bureau level.

⁷ See, e.g., *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Fifth Report and Order, 27 FCC Rcd 642, 646, para. 6 (2012) (*Fifth Report and Order*).

⁸ 47 CFR § 11.1. National activation of the EAS for a Presidential alert message is initiated by the transmission of an Emergency Action Notification (EAN) event code and is designed to provide the President the capability to transmit an alert message (in particular, an audio alert message) to the public within ten minutes from any location at any time. The EAN must take priority over any other alert message and preempt other alert messages in progress. See, e.g., *EAS First Report and Order*, 20 FCC Rcd 18625, 18628, para. 8. See also, e.g., 47 CFR §§ 11.33(a)(11), 11.51(m), (n).

transmission of EAS header and EOM codes generated internally within their EAS equipment.¹³ For the EAS monthly test, a test alert message, composed of EAS header codes, an attention signal, test audio script and the EOM code, is transmitted from key sources identified in the State EAS Plan,¹⁴ which in turn are monitored by EAS Participants, who retransmit the test alert as they would an actual EAS alert.¹⁵ EAS Participants are required to determine the cause of any failure to receive the monthly test or weekly activation, and make appropriate entries in their station logs or facility records.¹⁶

B. The EAS First Report and Order

5. In the *EAS First Report and Order*, the Commission extended EAS obligations to various digital services, including SDARS.¹⁷ SDARS, commonly known as “satellite radio,” is “[a] radiocommunication service in which audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations, and which may involve complementary repeating terrestrial transmitters, telemetry, tracking and control facilities.”¹⁸ More colloquially, SDARS is primarily a satellite-delivered service in which digital radio programming is sent directly from satellites to subscriber receivers either at a fixed location or in motion.¹⁹

6. With respect to testing requirements, although the Commission acknowledged that SDARS did not (and could not) supply local programming and EAS alerts, it nonetheless imposed the same testing regime as that applied to broadcasters, requiring “SDARS licensees to test their ability to receive and distribute EAS messages in the same manner required of other EAS participants in section 11.61 of our rules and to keep records of all tests.”²⁰ Accordingly, SDARS licensees were required to adhere to the general monthly test requirements that apply to most other EAS Participant services.²¹ With respect to weekly test requirements, the Commission required that “SDARS providers must conduct tests of the EAS Header and EOM codes at least once a week at random days and times on all channels.”²² By contrast, the Commission adopted less burdensome testing requirements for DBS providers on grounds that performing such tests on all channels simultaneously on an inherently nationwide platform could

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⁹ EAS Participants are required to broadcast Presidential alerts; they participate in broadcasting state and local EAS alerts on a voluntary basis. See 47 CFR § 11.55(a). See also *EAS First Report and Order*, 20 FCC Rcd at 18628, para. 8. According to NWS, about 90% of all EAS activations are generated by NWS and relate to short-term weather events. See NWS Fact Sheet, “NOAA’s National Weather Service (NWS) and the Emergency Alert System” (Jan. 2014), http://www.nws.noaa.gov/os/dissemination/EAS_factsheet.pdf.

¹⁰ See 47 CFR § 11.31. Under this protocol, an EAS alert uses a four-part message: (1) preamble and EAS header codes (which contain information regarding the identity of the sender, the type of emergency, its location, and the valid time period of the alert); (2) audio attention signal; (3) audio message, if included by the alert originator; and (4) preamble and “end of message” (EOM) codes. See *id.* § 11.31(a). Although the EAS Protocol specifies that the message can be audio, video, or text, in practice, only audio is sent.

¹¹ At the national level, EAS message distribution starts at Primary Entry Point (PEP) stations, which are a group of geographically diverse, high-power radio stations designated and tasked by the Federal Emergency Management Agency (FEMA) to transmit “Presidential Level” messages initiated by FEMA. See *Fifth Report and Order*, 27 FCC Rcd at 646-47, para. 7; 47 CFR § 11.18(a). At the state level, state governors and state and local emergency operations managers activate the EAS by utilizing state-designated EAS entry points – specifically, State Primary stations and “State Relay” stations. See 47 CFR § 11.20. State Relay stations relay both national and state emergency messages to local areas. See 47 CFR § 11.18(d).

¹² See 47 CFR § 11.61.

¹³ See 47 CFR § 11.61(a)(2).

¹⁴ Section 11.21 of the EAS rules requires that state and local EAS operations must be described in State (and Local) EAS Plans, which must be submitted to the Commission for approval so that the Commission can ensure that these operations are consistent with national plans, FCC regulations, and national EAS operations. See 47 CFR § 11.21.

¹⁵ See 47 CFR § 11.61(a)(1).

pose technical challenges.²³ More specifically, whereas SDARS was required to conduct weekly and monthly tests on all channels, the Commission required that DBS providers need only log receipt of other EAS Participants' weekly tests, and that monthly tests "be performed on 10% of all channels monthly (excluding local-into-local channels for which the monthly transmission tests are passed through by the DBS provider), with channels tested varying from month to month, so that over the course of a given year, 100% of all channels are tested."²⁴

C. The Petition

7. As originally filed, the *XM Petition* requested that the Commission modify the SDARS EAS test requirements to more accurately reflect the national nature of the service. The Petition first requested that the EAS testing rules for SDARS be revised to require (i) a yearly test that would be transmitted on every channel simultaneously, and (ii) weekly and monthly tests that would be distributed on XM's Instant Traffic, Weather and Alert channels.²⁵ Sirius XM argued that requiring weekly and monthly tests on all of its channels "will mislead subscribers to believe that satellite radio operators transmit state and local EAS alerts on all channels, when in fact state and local EAS alerts will only be transmitted on those XM Instant Traffic, Weather & Alert channels on which XM has informed subscribers that it will offer state and local EAS messages."²⁶

8. On July 31, 2014, Sirius XM submitted an *ex parte* letter in which it indicated that "[t]he passage of time and changed circumstances since [XM] initially filed the [*XM Petition*] has also simplified the relief that is needed."²⁷ Specifically, Sirius XM requested that the Commission modify the testing rules for SDARS to make them comparable to those applied to DBS providers.²⁸ In justifying this request, Sirius XM contended that the requirement to carry weekly and monthly EAS tests on all Sirius XM channels "has imposed an excessive, disproportionate, and unnecessary burden on SiriusXM and its subscribers."²⁹ To that end, Sirius XM observed that "[u]nlike other multichannel services such as cable television, the satellite radio service rarely has natural breaks in programming for inserting a test, and

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¹⁶ See 47 CFR §§ 11.61(b), 11.35(a).

¹⁷ See *EAS First Report and Order*, 20 FCC Rcd 18625, 18641-42, para. 43; 47 CFR § 11.11(a).

¹⁸ 47 CFR § 25.103.

¹⁹ See 47 CFR §§ 25.106, 25.144. SDARS architecture may also include deployment of terrestrial repeater transmitters to re-transmit SDARS satellite programming, and thus ensure adequate signal strength to end users, in locations where the satellite signal is obstructed or otherwise subject to forms of interference. See 47 CFR § 25.144; *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, WT Docket No. 07-293, Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Band*, IB Docket No. 95-91, GEN Docket No. 90-357, RM-8610, Report and Order and Second Report and Order, 25 FCC Rcd 11710 (2010).

²⁰ *Id.* at 18641-42, para. 43.

²¹ See *id.*; 47 CFR § 11.61(a) (requiring receipt and transmission of test messages composed of the EAS header codes, attention signal, test audio script and EOM code originating from Local or State Primary sources). Although the Commission did not explicitly state that the monthly test had to be run on all channels, it rejected XM's position that it should be permitted to conduct tests on only one, designated channel, finding that "[t]he EAS testing regime is designed to test not only the EAS participant's ability to receive the message from the source it monitors, but also the ability of the participant to disseminate an alert to its entire audience." *EAS First Report and Order*, 20 FCC Rcd 18641-42, para. 43.

²² 47 CFR § 11.61(a)(2)(i)(D).

²³ *Id.* Although the Commission did not specify what problems it anticipated, it appears to have been referring to the technical changes – to transponder data streams, set-top-boxes and uplink facilities – to implement the requirement to transmit national EAS alerts. See *id.* at 18649, para. 56.

never has uniform breaks that apply to all of our approximately 150 channels.”³⁰ Sirius XM also contended that weekly testing of its system is “unnecessary and duplicative,” arguing, among other things, that it is “largely superseded by FEMA’s own testing of [Sirius XM’s EAS encoder/decoder] which is central to our EAS capabilities,” and achievable through logging requirements, “as [with] DBS.”³¹

9. On June 5, 2017, Sirius XM submitted the *Sirius XM Motion*, in which it requested leave to supplement the *XM Petition* with the modified testing relief requested in the *July 2014 Ex Parte Letter*.³² Sirius XM subsequently submitted a *Further Supplement* on September 24, 2018, to refine the relief requested in the *Sirius XM Motion*.³³

10. On November 7, 2018, the Public Safety and Homeland Security Bureau (Bureau) released a Public Notice seeking comment on the *July 2014 Ex Parte Letter*, *Sirius XM Motion*, *Further Supplement* and *November 2018 Letter*.³⁴ One comment was filed,³⁵ and one reply comment was filed (by Sirius XM).³⁶

III. DISCUSSION

11. As a threshold matter, we grant Sirius XM’s motion for leave to modify the *XM Petition* as described in the *Sirius XM Motion*, *Further Supplement* and *November 2018 Letter*.³⁷ We observe that comment was sought on these filings and that no party raised objections to the relief requested. We further observe that changed circumstances arose during the pendency of the *XM Petition*’s review that fundamentally altered the nature of the initial relief requested in the *XM Petition*.³⁸ In light of these developments, we conclude that it is in the public interest to grant the *Sirius XM Motion* and consider the *XM Petition* as modified by the above-identified filings to the extent noted herein.

12. As described below, we agree with Sirius XM that modifying the EAS testing requirements for SDARS to make them comparable to those applied to DBS providers is consistent with

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²⁴ 47 CFR § 11.61(a)(1)(ii). See also *EAS First Report and Order*, 20 FCC Rcd 18649-50, para. 57.

²⁵ See *XM Petition* at 4-8. The *XM Petition* also requested that the Commission clarify, with respect to state and local EAS alerts, that the transmission of functioning EAS codes and attention signals is only required to the extent technologically feasible – and in particular with respect to certain transmission technology it used for its Instant Traffic, Weather and Alert channels. *Id.* at 8. Sirius XM subsequently revised this aspect of the *XM Petition*, and converted the request for clarification into a request for waiver. See *Sirius XM Motion* at 3-4. As mentioned above, we are directing the Bureau to resolve that waiver request in a separate order.

²⁶ *Id.* at 5. Sirius XM also contended that such all-channel requirement would “completely preempt XM programming causing disruptions to XM’s subscribers in a manner unlike any other [EAS Participant service].” *Id.*

²⁷ See *July 2014 Ex Parte Letter* at 3.

²⁸ See *id.* The letter did not address the *XM Petition*’s request for clarification that the transmission of State and local EAS alert tones and attention signals need only be functional to the extent technologically feasible.

²⁹ *July 2014 Ex Parte Letter* at 2.

³⁰ *Id.*

³¹ *Id.* The EAS encoder/decoder device both encodes alerts for transmission and decodes alerts it receives. See 47 CFR §§ 11.32, 11.33, 11.34.

³² See *XM Motion* at 2.

³³ See *Further Supplement*. The *Further Supplement* was not accompanied by a motion seeking leave from the Commission to accept its untimely filing, as required by Section 1.429(d) of our rules, 47 CFR § 1.429(d). Accordingly, we dismiss any legal arguments or clarification requests contained therein. However, to the extent that the *Further Supplement* presents information that bears on the public interest considerations raised in the *Sirius XM Motion*, and our evaluation of the relief requested therein, we take cognizance of such information. See, e.g., *Applications of Dena Pictures, Inc. and Alexander B/Casting Co., a joint venture, dba Kaye – Smith Enterprises For*

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the purpose of the EAS testing rules and in the public interest, and we amend section 11.61 of the part 11 rules accordingly.³⁹ Specifically, we will require SDARS providers to log receipt of the weekly test, and to transmit the monthly test on 10% of all of its channels, with channels tested varying from month to month, so that over the course of a given year, 100% of all of its channels are tested.⁴⁰

13. We find that harmonizing SDARS testing requirements with DBS testing requirements is appropriate because these services are technologically similar. SDARS is similar to DBS in that they are both satellite-delivered services in which digital programming is sent directly from satellites to subscriber receivers.⁴¹ By virtue of similar network architectures, both services are inherently nationwide services. Further, SDARS and DBS are regulated in a similar manner. For example, both SDARS and DBS providers are subject to similar public interest and other obligations under Part 25 of the Commission's rules.⁴²

14. Notwithstanding this similarity, in the *EAS First Report and Order*, the Commission applied dissimilar testing requirements: it imposed on SDARS providers the same general monthly and weekly testing requirements that it applied to terrestrial EAS Participant services, while applying modified testing requirements to DBS.⁴³ The Commission concluded that requiring DBS providers to conduct weekly and monthly tests on all channels simultaneously on an inherently nationwide platform could pose technical challenges.⁴⁴ Accordingly, it required that DBS providers need only log receipt of other EAS Participants' weekly tests, and perform monthly tests on 10% of all channels such that over the course of a year, all channels are tested.⁴⁵

15. Meanwhile, the Commission required SDARS to conduct weekly and monthly tests on all channels. We agree with Sirius XM that these testing obligations are more onerous than those imposed on DBS (and other services subject to EAS requirements).⁴⁶ Both services provide programming via satellites over multiple channels,⁴⁷ which requires interrupting whatever programming is on these multiple channels to transmit the test.⁴⁸ However, whereas DBS is not required to transmit weekly tests at all, and

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Renewal of Licenses of Station KJRB, Spokane, Washington; Station KJR and KISW-FM, Seattle, Washington; Stations KXL and KXL-FM, Portland, Oregon; and Applications of Bellevue B/Casters, Assignor, and Kaye – Smith Enterprises, Assignee of KEZE-FM, Spokane, Washington, and The Great American Radio Corp., Assignee of KEZE, Spokane, Washington, Memorandum Opinion and Order, 46 RR2nd 1583, 1585, para. 3 (1980) (*Dena Pictures*) (taking into account information relevant to determining public interest considerations supplied in an untimely supplement to a timely filed petition for reconsideration, notwithstanding that the supplement was not accompanied by a motion seeking leave to accept such untimely supplement, finding that “since the public interest requires the Commission to take cognizance of all relevant facts in our actions, we will consider the material in the supplement to such an extent”); *New York City Transit Authority Application for Review*, Memorandum Opinion and Order, 4 FCC Rcd 4488, 4489, para. 11, n. 18 (1989) (*NYC Transit Authority*) (observing that even if the petitioner in that case “had not properly requested acceptance of its supplemental pleading, the public interest would [] have warranted consideration of the facts raised in [petitioner’s] supplement” (citing *Dena Pictures*)).

³⁴ Public Safety and Homeland Security Bureau Seeks Comment on Filings by Sirius XM Radio Inc., EB Docket No. 04-296, PS Docket No. 15-94, Public Notice, DA 18-1140 (PSHSB Nov. 7, 2018).

³⁵ See Sean Donelan Comments at 5 (filed Nov. 27, 2018). With respect to Sirius XM's request to change the SDARS test requirements, Donelan mischaracterized Sirius XM's modified request for relief as “no longer includ[ing] revising [the] EAS testing rules,” and did not address whether SDARS providers should be subject to DBS testing requirements. *Id.* at 4. Donelan also proposed various revisions to the EAS testing rules for digital multichannel EAS Participants. See Sean Donelan Comments at 4-5. Donelan's proposed revisions to the EAS testing rules fall outside the scope of this proceeding, and we therefore dismiss them.

³⁶ See Sirius XM Radio Inc. Reply (filed Dec. 7, 2018).

³⁷ See 47 CFR § 1.429(d); *Meredith Corp. v. FCC*, 809 F.2d 863, 869 (D.C.Cir.1987) (finding that “the Commission's own rules permit parties to file supplemental pleadings after the 30 day limit if granted leave to do so by the Commission,” and thus the Commission has “discretion” to make such grants); *Licenses of 21st Century Telesis Joint Venture and 21st Century Bidding Corporation For Facilities in the Broadband Personal Communications Services*, Order on Reconsideration, 16 FCC Rcd 17257, 17263-64, para. 18 (2001) (“By rule, we
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can transmit the monthly test over 10% of its channels per month, SDARS is required to transmit weekly tests on all of its channels every week, and monthly tests on all of its channels once per month.⁴⁹ In SDARS's case, there are no uniform breaks across all channels, such as a commercial break, that might unobtrusively accommodate a test.⁵⁰ Moreover, because SDARS is an audio service, the EAS header code tones, scripted audio and attention signal (in the case of a monthly test) are the *only* audio SDARS listeners will hear during the test.⁵¹ The Commission concluded in the *EAS First Report and Order* that the testing requirements adopted for DBS were "no more onerous to DBS providers than those required of any other EAS participant."⁵² On their face, the disparity in the testing requirements imposed upon DBS as compared to SDARS—two similarly situated services—confirm that the same cannot be said with respect to SDARS.

16. Nor is the purpose of EAS testing undermined by harmonizing the SDARS testing requirements with the DBS testing requirements. In the *EAS First Report and Order*, the Commission stated that the "EAS testing regime is designed to test not only the EAS participant's ability to receive the message from the source it monitors, but also the ability of the participant to disseminate an alert to its entire audience."⁵³ This purpose will continue to be fully realized by applying the weekly and monthly DBS testing requirements to SDARS providers, because the weekly logging requirement should identify alerts not received,⁵⁴ and the monthly requirements will ensure that, on a rolling basis, over a one year period, all Sirius XM's channels are able to disseminate the alert to its listeners.⁵⁵ Moreover, as Sirius XM points out, because Sirius XM serves as a PEP source for national EAS alerts, FEMA already tests Sirius XM's EAS equipment "on a regular basis through remote polling . . . without even notifying SiriusXM of the testing – unless a problem is discovered – and without any disruption to [Sirius XM's] customers."⁵⁶

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have discretion to hear late-filed supplements to timely filed petitions if a petitioner presents adequate grounds for us to do so" (*citing* 47 CFR § 1.106(f), governing petitions for reconsideration in non-rulemaking proceedings, and having essentially identical requirements for filing supplemental information to a timely filed petition for reconsideration as those set forth in 47 CFR § 1.429(d)); *NYC Transit Authority*, 4 FCC Rcd 4488, 4489, para. 11 (upholding a bureau decision to accept supplemental information filed after the 30-day period for petitions for reconsideration, observing that a petition for reconsideration was timely filed and the supplement "provided information essential to an understanding of the public interest considerations [involved]"). Although Sirius XM did not submit a motion for leave to file the *Further Supplement* as required by the Commission's rules, we take cognizance of the developments and facts described therein, to the extent those bear on our public interest determinations relevant to resolving the relief requested in the *Sirius XM Motion*. We also observe that the *November 2018 Letter* is an *ex parte* communication that served as a transmittal letter to incorporate into the record of this proceeding FEMA's correspondence identifying its official position regarding which Sirius XM channels it will permit to be monitored for federal EAS alerts, and we take notice of that factual information at our discretion. 47 CFR § 1.1206. Although this factual information does not bear on the testing relief requested by Sirius XM, to the extent it is relevant to making a public interest determination on the waiver request contained in the *Sirius XM Motion*, the Bureau may also incorporate such information into its resolution of such request on that basis.

³⁸ For example, subsequent to the XM Petition's filing, Sirius XM became a PEP source for national EAS alerts, which involves, among other things, regular testing of Sirius XM's EAS equipment by FEMA. *See July 2014 Ex Parte Letter* at 2. *See also infra* para. 15.

³⁹ *See* Appendix A.

⁴⁰ *See id.*

IV. PROCEDURAL MATTERS

17. *Accessible Formats.* 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 Sirius XM Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

18. *Paperwork Reduction Act.* As indicated in paragraphs 12 of this Order and paragraphs 32 and 34 of the Supplemental Final Regulatory Flexibility Analysis, this document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. These modified requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (NPRM), adopted in August 2004,⁵⁷ which sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

19. In this present document, we have assessed the effects of the information collection associated with the modified reporting requirement set forth in this Order, and find that because this information collection involves a decrease in testing burdens that should more than offset the increase in logging burdens, the net burden of information collection should be reduced and therefore should not pose a substantial burden for businesses with fewer than 25 employees.

20. *Congressional Review Act.* The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review

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⁴¹ DBS is “[a] radiocommunication service in which signals transmitted or retransmitted by Broadcasting-Satellite Service space stations in the 12.2-12.7 GHz band are intended for direct reception by subscribers or the general public.” 47 CFR § 25.103. One important difference between SDARS and DBS is that DBS typically involves delivery of video programming whereas SDARS involves delivery of audio programming.

⁴² We observe, for example, that SDARS is subject to political broadcasting and political file requirements similar to the obligations placed on DBS licensees. Compare 47 CFR §§ 25.702(a) and (b) with 47 CFR §§ 25.701(b) and (d). In addition, both services are subject to public interest requirements to reserve channel capacity on their systems for use by third parties. For DBS licensees, this obligation is codified at 47 CFR § 25.701(f); for SDARS, the obligation is a condition to the grant of the merger application between XM and Sirius. See *Sirius-XM Merger Order*, 23 FCC Rcd 12348, 12408, 12413 paras. 135 and 141.

⁴³ See *EAS First Report and Order*, 20 FCC Rcd 18625, 18641-42, para. 43, 18649-50, para. 57.

⁴⁴ *Id.* Although the Commission did not specify what problems it anticipated, it appears to have been referring to the technical changes – to transponder data streams, set-top-boxes and uplink facilities – to implement the requirement to transmit national EAS alerts. See *id.* at 18649, para. 56.

⁴⁵ 47 CFR § 11.61(a)(1)(ii). See also *EAS First Report and Order*, 20 FCC Rcd 18649-50, para. 57.

⁴⁶ See *July 2014 Ex Parte Letter* at 1-2.

⁴⁷ See *Further Supplement* at 5 (indicating that the Sirius XM service includes “over 170 fulltime channels on the XM Radio platform and over 160 fulltime channels on the Sirius platform.”).

⁴⁸ We recognize that DBS has certain mandatory carriage requirements with respect to local television broadcast station programming that SDARS does not, and the technical challenges associated with transmitting the EAS alert on all channels *except* those carrying such local programming led the Commission to provide DBS with more time than SDARS to comply with the EAS rules, when it applied them to these services in 2005. See *EAS First Report and Order*, 20 FCC Rcd 18625, 18648-49, paras. 55-56.

⁴⁹ Compare 47 CFR § 11.61(a)(1)(i) with 47 CFR § 11.61(a)(1)(ii); compare 47 CFR § 11.61(a)(2)(i)(D) with 47 CFR § 11.61(a)(2)(ii).

Act. *See* 5 U.S.C. § 801(a)(1)(A).

21. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended, we have prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) as set forth in Appendix B, addressing the actions taken in this Order.⁵⁸

22. *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), 202-418-0432 (tty).

23. *Additional Information.* For additional information on this proceeding, contact David Munson of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, david.munson@fcc.gov, (202) 418-2921.

V. ORDERING CLAUSE

24. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 405, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 405, and 606, and section 1.429 of our rules, 47 CFR § 1.429, the Petition for Partial Reconsideration and Clarification of Sirius XM Radio Inc., as modified by the Motion of Sirius XM Radio Inc. for Leave to Supplement Petition for Reconsideration and Request for Limited Waiver ARE GRANTED to the extent set forth herein;

25. IT IS FURTHER ORDERED that pursuant to section 1.429(d) of our rules, 47 CFR § 1.429(d), Sirius XM Radio Inc.'s request for leave to supplement its pending petition for reconsideration set forth in the Motion of Sirius XM Radio Inc. for Leave to Supplement Petition for Reconsideration and Request for Limited Waiver IS GRANTED to the extent set forth herein;

26. IT IS FURTHER ORDERED that pursuant to section 1.429(d) of our rules, 47 CFR § 1.429(d), the Further Supplement of Sirius XM Radio Inc. to Petition for Reconsideration and Request for Limited Waiver IS DISMISSED to the extent set forth herein;

(Continued from previous page) _____

⁵⁰ *See July 2014 Ex Parte Letter at 2.* As Sirius XM also observed, its EAS encoder/decoder also is tested by FEMA “on a regular basis through remote polling of the [EAS encoder/decoder] box without even notifying SiriusXM of the testing – unless a problem is discovered.” *Id.*

⁵¹ By contrast, DBS programming includes both audio and video, thus, the monthly test does not occupy the totality of the subscriber’s experience and presents less potential for customer confusion or disruption to the consumer as a result.

⁵² *EAS First Report and Order*, 20 FCC Rcd 18625, 18649-50, para. 57.

⁵³ *EAS First Report and Order*, 20 FCC Rcd 18625, 18641-42, para. 43. This purpose is consistent with the Commission’s testing rules for DBS. *See* 20 FCC Rcd 18625, 18649-50, para. 57 (observing that the EAS testing requirements adopted for DBS “ensure[] that DBS providers are able to receive and transmit EAS messages”).

⁵⁴ We also observe that changing the SDARS testing rules to require weekly logging instead of weekly testing should not represent any increase in regulatory burdens that would significantly burden small entities. EAS equipment automatically records when weekly tests are received, and not having to transmit the EAS header codes and EOM on all channels randomly once per week relieves the SDARS provider from having to coordinate and administer such testing.

⁵⁵ Neither DBS nor SDARS are monitored for state and local EAS alerts, thus, monthly tests conducted by DBS and SDARS providers do not test the “daisy chain” distribution of the test alert within the state that issued the test.

⁵⁶ *July 2014 Ex Parte Letter at 2.*

⁵⁷ *See Review of the Emergency Alert System*, EB Docket No. 04-296, Notice of Proposed Rulemaking, 19 FCC Rcd 15775 (2004) (*Notice of Proposed Rulemaking*), Appendix A.

⁵⁸ 5 U.S.C. §604.

27. IT IS FURTHER ORDERED that Part 11 of the Commission's rules, 47 CFR Part 11, IS AMENDED as set forth in Appendix A, and such rule amendments SHALL BE EFFECTIVE thirty (30) days after publication of the rule amendments in the Federal Register, except to the extent they contain information collections subject to PRA review. The rule amendments that contain information collections subject to PRA review SHALL BECOME EFFECTIVE upon the effective date announced when the Commission publishes a notice in the Federal Register announcing such OMB approval and the effective date.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

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

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. Amend § 11.61 by adding (a)(1)(iii), removing (a)(2)(i)(D) and revising (a)(2)(ii) as follows:

§ 11.61 Tests of EAS procedures.

(a) * * * * *

(1) * * *

(iii) SDARS providers must comply with this section by monitoring a state or local primary source to participate in testing. Tests should be performed on 10% of all channels monthly, with channels tested varying from month to month, so that over the course of a given year, 100% of all channels are tested.

(2) * * *

(i) * * *

(D) [removed]

(ii) DBS providers, SDARS providers, analog and digital class D non-commercial educational FM stations, analog and digital LPFM stations, and analog and digital LPTV stations are not required to transmit this test but must log receipt, as specified in §11.35(a) and 11.54(a)(3).

* * * * *

APPENDIX B

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (NPRM), adopted in August 2004.² The Commission sought written public comment on the proposals in the NPRM, including comments on the IRFA. No comments were filed addressing the IRFA. The Commission included a Final Regulatory Flexibility Analysis (FRFA) in Appendix D of the *EAS First Report and Order* in this proceeding.³ This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA to reflect the actions taken in this *Order on Reconsideration* (*Order*) and conforms to the RFA.⁴

A. Need for, and Objective of, the Order

2. In the *EAS First Report and Order*, the Commission extended Emergency Alert System (EAS) obligations to digital television and radio, digital cable, and satellite television and radio services.⁵ Among other things, the Commission extended EAS obligations to Satellite Digital Audio Radio Service (SDARS).⁶ A petition for partial reconsideration of the *EAS First Report and Order* was filed by Sirius XM Radio Inc. (Sirius XM), the sole provider of Satellite Digital Audio Radio Service (SDARS) in the United States.⁷

3. We grant on reconsideration, to the extent described herein, the petition for partial reconsideration of the *EAS First Report and Order*. Specifically, we revise the EAS testing requirements for SDARS providers to make them symmetrical to Direct Broadcast Satellite (DBS) providers.

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

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

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

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

² See *Review of the Emergency Alert System*, EB Docket No. 04-296, Notice of Proposed Rulemaking, 19 FCC Rcd 15775 (2004) (*Notice of Proposed Rulemaking*), Appendix A.

³ See *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625 (2005) (*EAS First Report and Order*), Appendix D.

⁴ See 5 U.S.C. § 604.

⁵ See *EAS First Report and Order*, 20 FCC Rcd at 18636, para. 1; see also 47 CFR § 11.11(a).

⁶ See *id.* at 18641-42, para. 43; see also 47 CFR § 11.11(a).

⁷ See Petition for Partial Reconsideration and Clarification of XM Radio Inc., EB Docket No. 04-296 (filed Dec. 27, 2005) (*XM Petition*). Although this petition was originally filed by XM Radio Inc. (XM), that entity subsequently became Sirius XM Radio Inc. when the Commission approved the merger of Sirius Satellite Radio Inc. and XM in August 2008. See *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, MB Docket No. 07-57, 23 FCC Rcd 12348 (2008).

Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.⁸

6. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.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

8. As noted above, a FRFA was incorporated into the *EAS First Report and Order*. In that analysis, the Commission described in detail the small entities that might be significantly affected by the rules adopted in the *EAS First Report and Order*.¹³ This Supplemental FRFA reflects updated information, where applicable, for the descriptions and estimates of the number of small entities in the previous FRFA in this proceeding.

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹⁴ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁵ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹⁶

10. 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.”¹⁷

⁸ 5 U.S.C. § 604(a)(3).

⁹ *Id.* § 603(a)(4).

¹⁰ *Id.* § 601(6).

¹¹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹² 15 U.S.C. § 632.

¹³ See *EAS First Report and Order*, 20 FCC Rcd at 18699-704, paras. 5-16.

¹⁴ See 5 U.S.C. § 601(3)-(6).

¹⁵ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

¹⁶ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹⁷ 5 U.S.C. § 601(4).

Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁸

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁹ U.S. Census Bureau data from the 2012 Census of Governments²⁰ indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²¹ Of this number there were 37,132 General purpose governments (county²², municipal and town or township²³) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts²⁴ and special districts²⁵) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.²⁶ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²⁷

12. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”²⁸ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²⁹ 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 has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.³⁰ The 2012 Economic Census reports that 751 firms in this category operated in that year.³¹ Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual

¹⁸ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

¹⁹ 5 U.S.C. § 601(5).

²⁰ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.CO G#>.

²¹ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

²² See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more.³² Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

13. The Commission has estimated the number of licensed commercial television stations to be 1,377.³³ Of this total, 1,258 stations (or about 91%) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384.³⁴ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations.³⁵ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

14. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations³⁶ 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

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²³ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States.

<https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²⁴ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States.

<https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

²⁵ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. [The U.S. Census Bureau data did not provide a population breakout for special district governments.](#)

²⁶ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. [While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.](#)

²⁷ *Id.*

²⁸ U.S. Census Bureau, 2017 NAICS Definitions, “515120 Television Broadcasting,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017>.

²⁹ *Id.*

³⁰ 13 CFR § 121.201; 2012 NAICS code 515120.

³¹ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515120.

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. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

15. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”³⁷ The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.³⁸ Economic Census data for 2012 show that 2,849 radio station firms operated during that year.³⁹ Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.⁴⁰ Therefore, based on the SBA’s size standard the majority of such entities are small entities.

16. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9%) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition.⁴¹ The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371.⁴² We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,128.⁴³ Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

17. We also note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.⁴⁴ The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue

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³² *Id.*

³³ *Broadcast Station Totals* as of June 30, 2018, Press Release (MB, rel. Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals Press Release), <https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ “[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 § 21.103(a)(1).

³⁷ U.S. Census Bureau, 2017 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

³⁸ 13 CFR § 121.201; NAICS code 515112.

³⁹ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* NAICS Code 515112, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112.

⁴⁰ *Id.*

⁴¹ BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

⁴² *Broadcast Station Totals* as of June 30, 2018, Press Release (MB Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf>.

⁴³ *Id.*

⁴⁴ “[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 power to control both.” 13 CFR § 121.103(a)(1).

figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation.⁴⁵ We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

18. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.⁴⁶ Industry data indicate that there are currently 4,600 active cable systems in the United States.⁴⁷ Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.⁴⁸ In addition, under the Commission’s rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.⁴⁹ Current Commission records show 4,600 cable systems nationwide.⁵⁰ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁵¹ Thus, under this standard as well, we estimate that most cable systems are small entities.

19. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 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.”⁵² There are approximately 52,403,705 cable video subscribers in the United States today.⁵³ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁵⁴ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁵⁵ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual

⁴⁵ 13 CFR § 121.102(b).

⁴⁶ 47 CFR § 76.901(e).

⁴⁷ The number of active, registered cable systems comes from the Commission’s Cable Operations and Licensing System (COALS) database on August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, www.fcc.gov/coals (last visited Oct. 25, 2016).

⁴⁸ See SNL KAGAN, *Top Cable MSOs*, <https://www.snl.com/Interactivex/TopCableMSOs.aspx> (last visited Oct. 25, 2016).

⁴⁹ 47 CFR § 76.901(c).

⁵⁰ See *supra* note 2.

⁵¹ See FCC, *Cable Operations and Licensing System (COALS)*, www.fcc.gov/coals (last visited Oct. 25, 2016).

⁵² 47 CFR § 76.90(f) and notes ff. 1, 2, and 3.

⁵³ See SNL KAGAN at <http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx>.

⁵⁴ 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

⁵⁵ See SNL KAGAN at <http://www.snl.com/interactivex/TopCable MSOs.aspx>.

revenues exceed \$250 million.⁵⁶ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, 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.

20. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).⁵⁷

21. *BRS* - 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.⁵⁸ 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 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard).⁵⁹ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

22. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.⁶⁰ 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% 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% 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% discount on its winning bid.⁶¹ Auction 86 concluded in 2009 with the sale of 61 licenses.⁶² Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed

⁵⁶ The Commission receives 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 section 76.901(f) of the Commission’s rules. See 47 CFR § 76.901(f).

⁵⁷ *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).

⁵⁸ 47 CFR § 21.961(b)(1).

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

⁶⁰ *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).

⁶¹ *Id.* at 8296 para. 73.

⁶² *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).

entrepreneur status won six licenses.

23. *EBS* - Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.⁶³ The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees.⁶⁴ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.⁶⁵ Of this total, 3,083 operated with fewer than 1,000 employees.⁶⁶ Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.⁶⁷

24. *Wireless Carriers and Service Providers*. Neither the SBA nor the Commission has developed a size standard specifically applicable to Wireless Carriers and Service Providers. The closest applicable SBA category and size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons.⁶⁸ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁶⁹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁷⁰ Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Carriers and Service Providers are small entities.

25. According to internally developed Commission data for all classes of Wireless Service Providers, there are 970 carriers that reported they were engaged in the provision of wireless services.⁷¹ Of this total, an estimated 815 have 1,500 or fewer employees, and 155 have more than 1,500

⁶³ U.S. Census Bureau, 2017 NAICS Definitions, "517311 Wired Telecommunications Carriers," (partial definition), <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁶⁴ See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁶⁵ See U.S. Census Bureau, 2012 Economic Census of the United States, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁶⁶ *Id.*

⁶⁷ 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).

⁶⁸ 13 CFR § 121.201, NAICS codes 517210.

⁶⁹ U.S. Census Bureau, 2012 Economic Census of the United States, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

⁷⁰ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁷¹ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

employees.⁷² Thus, using available data, we estimate that the majority of Wireless Carriers and Service Providers can be considered small.

26. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁷³ For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁴ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁷⁵ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40% of the 1,479 licenses in the first auction for the D, E, and F Blocks.⁷⁶ On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.⁷⁷ Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

27. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.⁷⁸ Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.⁷⁹ On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.⁸⁰ Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.⁸¹ On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block

⁷² See *id.*

⁷³ See *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*; WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (*PCS Report and Order*); see also 47 CFR § 24.720(b).

⁷⁴ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

⁷⁵ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

⁷⁶ See *D, E and F Block Auction Closes*, Public Notice, DA-97-81 (Jan. 15, 1997), 1997 WL 20711.

⁷⁷ See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768, para. 46 (1998).

⁷⁸ See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

⁷⁹ See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

⁸⁰ See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

⁸¹ *Id.*

Broadband PCS licenses in Auction No. 78.⁸² Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.⁸³

28. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.⁸⁴ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.⁸⁵ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.⁸⁶ Of this total, 3,083 operated with fewer than 1,000 employees.⁸⁷ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.⁸⁸ Of this total, an estimated 1,006 have 1,500 or fewer employees.⁸⁹ Thus using the SBA's size standard the majority of incumbent LECs can be considered small entities.

29. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees.⁹⁰ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.⁹¹ Of that number, 3,083 operated with fewer than 1,000 employees.⁹² Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁹³ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.⁹⁴ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁹⁵ Also, 72

⁸² See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

⁸³ *Id.*

⁸⁴ See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICs code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>

⁸⁵ *Id.*

⁸⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁸⁷ *Id.*

⁸⁸ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

⁸⁹ *Id.*

⁹⁰ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICs code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁹¹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.s

carriers have reported that they are Other Local Service Providers.⁹⁶ Of this total, 70 have 1,500 or fewer employees.⁹⁷ Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

30. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁹⁸ Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁹⁹ For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.¹⁰⁰ Of this total, 299 firms had annual receipts of less than \$25 million.¹⁰¹ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

31. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁰² This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.¹⁰³ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.¹⁰⁴ The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$ 32.5 million or less.¹⁰⁵ For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year.¹⁰⁶ Of those firms, a total of 1,400 had annual receipts less than \$25 million and 42 firms

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⁹² *Id.*

⁹³ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ U.S. Census Bureau, 2017 NAICS Definitions, “517410 Satellite Telecommunications”; <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

⁹⁹ 13 CFR § 121.201, NAICS code 517410.

¹⁰⁰ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~517410.

¹⁰¹ *Id.*

¹⁰² See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See 13 CFR § 121.201, NAICS code 517919.

had annual receipts of \$25 million to \$49, 999,999.¹⁰⁷ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

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

32. The reporting, recordkeeping, and other compliance requirements resulting from the *EAS First Report and Order* as described in the previous FRFA in this proceeding are hereby incorporated by reference.¹⁰⁸ The actions we take in the *Order* modify the SDARS testing requirements to make them symmetrical to the DBS testing requirements, and do not otherwise amend or revise the requirements adopted in the *EAS First Report and Order*. More specifically, SDARS providers will be required to log receipt of the weekly test (which represents a new reporting requirement for SDARS providers), and to transmit the monthly test on 10% of all of its channels, with channels tested varying from month to month, so that over the course of a given year, 100% of all of their channels are tested.¹⁰⁹

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

33. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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) and exemption from coverage of the rule, or any part thereof, for small entities.”¹¹⁰

34. In granting partial reconsideration of the *EAS First Report and Order*, the Commission opted to modify the current SDARS testing requirements and make them symmetrical to the DBS testing requirements based on its finding that SDARS and DBS services are similarly situated. Notwithstanding their similarity and the similar challenges the two services faced in conducting weekly and monthly tests on all channels simultaneously, in the *EAS First Report and Order*, the Commission applied the same general monthly and weekly testing requirements to SDARS providers that it applied to terrestrial EAS Participant services, while applying modified testing requirements to DBS providers. The Commission’s action to harmonize the SDARS testing requirements with the DBS testing requirements on reconsideration should significantly reduce the economic impact for SDARS providers associated with compliance with the general monthly and weekly testing requirements adopted in the *EAS First Report and Order*. The modified weekly test requirement for SDARS of substituting logging of receipt of a weekly test for conducting the weekly test, represents a reduced burden, as EAS equipment automatically records when weekly tests are received. Further, not having to transmit the EAS header codes and EOM on all channels randomly once per week relieves the SDARS provider from having to coordinate and administer such testing.

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¹⁰⁶ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919.

¹⁰⁷ *Id.*

¹⁰⁸ *See id.* at 18704-05, paras. 17-23.

¹⁰⁹ *See* Appendix A.

¹¹⁰ 5 U.S.C. § 603(c)(1)-(4).

G. Report to Congress

35. The Commission will send a copy of the *Order*, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act.¹¹¹ In addition, the Commission will send a copy of the *Order*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.¹¹²

¹¹¹ 5 U.S.C. § 801(a)(1)(A).

¹¹² *Id.* § 604(b).