

Dated: June 26, 2013.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

[MB Docket No. 11-154; FCC 13-84]

#### Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the potential imposition of closed captioning synchronization requirements for covered apparatus, and on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute. These issues were raised by petitions for reconsideration of the *Report and Order*, which adopted rules governing the closed captioning requirements for the owners, providers, and distributors of IP-delivered video programming and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming.

**DATES:** Comments are due on or before September 3, 2013; reply comments are due on or before September 30, 2013.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 11-154, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, 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.

- *People with Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

**FOR FURTHER INFORMATION CONTACT:**

Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), or Maria Mullarkey, [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), of the Policy Division, Media Bureau, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rulemaking*, FCC 13-84, adopted on June 13, 2013 and released on June 14, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. 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, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

#### Summary of the Further Notice of Proposed Rulemaking

##### I. Introduction

1. In the *FNPRM*, we seek further comment on the potential imposition of closed captioning synchronization requirements for covered apparatus, and on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute. These issues were raised by petitions for reconsideration of the *Report and Order*, which implemented portions of sections

202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") by adopting rules governing the closed captioning requirements for the owners, providers, and distributors of video programming delivered via Internet protocol ("IP") and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming. Specifically, in response to the Petition for Reconsideration of Consumer Groups, we issue an *FNPRM* to obtain further information necessary to determine whether the Commission should impose synchronization requirements on device manufacturers. Such synchronization requirements could provide that all apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives. Separately, in response to issues raised by the Petition for Reconsideration of the Consumer Electronics Association, the *FNPRM* seeks comment on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute.

2. Our goal in this proceeding remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. In considering the requests made in the three petitions for reconsideration received, we have evaluated the effect on consumers who are deaf or hard of hearing as well as the cost of compliance to affected entities.

#### II. Further Notice of Proposed Rulemaking

3. *Apparatus synchronization requirements.* We invite comment on whether the Commission should require apparatus manufacturers to ensure that their apparatus synchronize the appearance of closed captions with the display of the corresponding video. In the *Report and Order*, the Commission concluded that it would be inappropriate to impose synchronization requirements on apparatus. Rather, the Commission stated "that ensuring that timing data is properly encoded and maintained through the captioning interchange and delivery system is an obligation of [s]ection 202 [video programming distributors and providers], and not of device manufacturers." Consumer Groups argue that the Commission should impose timing obligations on device manufacturers pursuant to section 203 of the CVAA because apparatus may cause captions to become out of synch with the corresponding video. We need more information in the

record to address this issue because commenters disagree as to whether synchronization problems can be caused by apparatus.<sup>1</sup> Commenters also disagree as to whether existing standards would enable manufacturers to address caption synchronization.<sup>2</sup> Another issue is whether video programming owners, providers, and distributors are better suited than manufacturers to ensure captioning quality, including captioning synchronization. Based on the record information on synchronization in response to the Consumer Groups Petition, it now appears that apparatus may play a role in synchronization problems. We do not, however, currently possess sufficient information to determine the nature or extent to which apparatus are the cause of these problems, or whether there is a workable manner in which to impose synchronization requirements on apparatus. Accordingly, we invite comment on this issue.

4. Specifically, we seek information on whether apparatus may cause closed captioning synchronization problems, and if so, how. We encourage commenters to provide specific evidence on this issue, including for example a discussion of situations in which the same video programming is displayed in the same manner (*i.e.*, on the same Web site or via the same application) on different apparatus, where one apparatus displays the closed captioning with better synchronization than the other. Are video programming owners, providers, and distributors better suited than manufacturers to ensure caption quality, including synchronization? If so, why? What are the costs and benefits of imposing caption synchronization requirements on video programming owners, providers, and distributors in lieu of imposing such requirements on apparatus manufacturers?

5. To the extent that apparatus cause closed captioning synchronization problems, we seek comment on what

requirements we should impose on apparatus to address this problem. Are there existing standards that would enable manufacturers to address closed caption synchronization, or is it possible for manufacturers to develop and implement such standards? If not, by what means could apparatus comply with a synchronization requirement? Do closed captioning standards provide the necessary timing data for compliance with and enforcement of a synchronization standard? If we impose a synchronization requirement on apparatus, should we require apparatus to render closed captions consistent with the data dictating the timing of captions that is included with the video programming the apparatus receives? What are the costs and benefits of imposing caption synchronization requirements on apparatus manufacturers? What compliance deadline should we impose on any apparatus synchronization requirements that we adopt? In an enforcement proceeding, how could the Commission determine whether synchronization problems are caused by the apparatus or by the video programming owner, provider, or distributor?

6. *Closed captioning requirements on DVD and Blu-ray players.* As explained in the *Order on Reconsideration*, adopted with the *FNPRM* and published elsewhere in this publication, we provide manufacturers of DVD players that do not render or pass through closed captions, and manufacturers of Blu-ray players, with a temporary extension of the compliance deadline, pending resolution of this *FNPRM*. The CVAA and our rules require that apparatus “be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.” Thus, we invite comment on the closed captioning requirements that we should impose on DVD players that do not render or pass through closed captions, and on Blu-ray players with regard to Blu-ray discs and DVDs.<sup>3</sup> Commenters should provide information on the costs and benefits of imposing such requirements, including the technical aspects of what would be required to make closed captioning accessible on such devices.

7. We seek comment on whether we should permit DVD players that do not currently render or pass through closed captions to include an analog output to pass through closed captions. As

explained in the *Order on Reconsideration*, the record demonstrates that the DVD player market is declining. Accordingly, how would such a regulation on DVD players impact the market? In the context of low-cost DVD players, would there be sufficient consumer demand for manufacturers to continue manufacturing such players if faced with the costs of rendering or adding an analog output? Given that Blu-ray players are able to play both Blu-ray discs and DVDs, should we consider Blu-ray players that do not render closed captions but include an analog output to pass through closed captions on DVDs to comply with the closed captioning requirements of the CVAA? Is there a consumer expectation that captioned DVDs should be viewable on a backward compatible Blu-ray player? Should Blu-ray players that include an analog output that pass through captions be granted a waiver of the Commission’s interconnection mechanism rule (as we have granted in the *Order on Reconsideration* in the DVD context)? Alternatively, should we require Blu-ray players to render captions from DVDs? We seek specific comment on the costs and benefits of the approaches considered herein as well as on the technical aspects of what would be required to effectuate these requirements. For example, would manufacturers be required to implement a software or hardware upgrade? Similarly, what are the costs and benefits of requiring all DVD and Blu-ray players to include an analog output, and what technical steps are necessary to achieve this? In addition, what would be an appropriate deadline for compliance with the closed captioning requirements for DVD players that do not render or pass through captions and for Blu-ray players?

8. With regard to Blu-ray players playing Blu-ray discs, as we noted above, there is not currently an industry-wide standard for closed captioning on Blu-ray discs. Thus, Blu-ray discs do not currently contain captions. Does this fact make it more important that Blu-ray player manufacturers take steps to ensure that captions from DVDs can be rendered or passed through? Should we require Blu-ray players to render or pass through captions from Blu-ray discs within a certain period of time with the expectation that doing so would spur the industry to prioritize developing a standard for discs and include captions on Blu-ray discs? Alternatively, given that Blu-ray discs as well as DVDs

<sup>1</sup> Consumer Groups argue that synchronization problems can be caused by apparatus, and thus failure to place synchronization obligations on apparatus may make timing requirements on video programming distributors ineffective. To the contrary, Mitsubishi Electric Visual Solutions America, Inc. (“MEVSA”) argues that it is unaware of any caption display synchronization problems caused by receivers, and CEA argues that decoders do not cause synchronization problems.

<sup>2</sup> CEA and MEVSA argue that existing standards would not enable manufacturers to comply with a synchronization requirement. Consumer Groups disagree, arguing that mainstream captioning standards such as CEA-608, CEA-708, and the Society of Motion Picture and Television Engineers (“SMPTE”) Timed Text Format (“SMPTE-TT”) support synchronization.

<sup>3</sup> We understand that many, if not all, Blu-ray players are “backward compatible” with DVDs, that is, they are able to play both Blu-ray discs and DVDs. We seek comment on this understanding.

currently include subtitles,<sup>4</sup> we seek comment on whether, as a legal matter, rendering or passing through subtitles could satisfy section 303(u)'s requirement that the Blu-ray players and DVD players "be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming." Could the rendering or passing through subtitles be considered an "alternate means" of compliance with our rules?<sup>5</sup> Or, should subtitles or SDH only be considered an alternative means of compliance to the extent that they can be made compatible with the technical capabilities set forth in our apparatus closed captioning rules (for example, the ability to change text font and size)? We seek specific comment on what steps the industry, including content providers, must take to provide this type of "enhanced" subtitles or SDH. For example, what technical steps can manufacturers take in this regard?

### III. Procedural Matters

#### A. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),<sup>6</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") concerning the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking ("FNPRM"). 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 provided on the first page of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").<sup>7</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>8</sup>

<sup>4</sup> Subtitles for the deaf and hard of hearing ("SDH") do not provide all of the features available with closed captions.

<sup>5</sup> See Public Law 111–260, section 203(e) ("An entity may meet the requirements of sections 303(u), 303(z), and 330(b) of the Communications Act of 1934 through alternate means than those prescribed by regulations pursuant to subsection (d) if the requirements of those sections are met, as determined by the Commission."). In the *Report and Order*, the Commission recognized that SDH does not offer the same user control features as closed captioning.

<sup>6</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

<sup>7</sup> See 5 U.S.C. 603(a).

<sup>8</sup> See *id.*

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

10. In the FNPRM, we seek further comment on the potential imposition of closed captioning synchronization requirements for covered apparatus, and on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute. These issues were raised by petitions for reconsideration of the *Report and Order*, which implemented portions of sections 202 and 203 of the Twenty-First Century Communications and Video Accessibility Act of 2010 ("CVAA") by adopting rules governing the closed captioning requirements for the owners, providers, and distributors of video programming delivered via Internet protocol ("IP") and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming. Specifically, in response to the Petition for Reconsideration of Consumer Groups, we issue an FNPRM to obtain further information necessary to determine whether the Commission should impose synchronization requirements on device manufacturers. Such synchronization requirements could provide that all apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives. Separately, in response to issues raised by the Petition for Reconsideration of the Consumer Electronics Association, the FNPRM seeks comment on how DVD and Blu-ray players can fulfill the closed captioning requirements of the statute.

11. Our goal in this proceeding remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. In considering the requests made in the three petitions for reconsideration received, we have evaluated the effect on consumers who are deaf or hard of hearing as well as the cost of compliance to affected entities.

#### 2. Legal Basis

12. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

#### 3. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

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

14. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may

<sup>9</sup> 5 U.S.C. 603(b)(3).

<sup>10</sup> 5 U.S.C. 601(6).

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

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

qualify as “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

15. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,906 firms that operated that year. Of those 1,906, 1,880 had fewer than 1000 employees, and 26 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

16. *Cable Companies and Systems.* The Commission has also 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. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

17. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” The Commission has determined that an operator serving fewer than 677,000 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. Industry data indicate that all but nine

cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

18. *Direct Broadcast Satellite (“DBS”) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,” which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (“EchoStar”) (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

19. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts.

20. The category of “Satellite Telecommunications” “comprises establishments 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.” Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments

operated for that entire year. Of this total, 533 establishments had annual receipts of under \$10 million or less, and 74 establishments had receipts of \$10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

21. The second category, *i.e.*, “All Other Telecommunications,” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 shows that there were a total of 2,623 establishments that operated for the entire year. Of this total, 2,478 establishments had annual receipts of under \$10 million and 145 establishments had annual receipts of \$10 million or more. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

22. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$14 million or less in annual receipts. The Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less. We therefore estimate that the majority of commercial television broadcasters are small entities.

23. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations

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, an element of the definition of “small business” is that the 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 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 to that extent.

24. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. These stations are non-profit, and therefore considered to be small entities.

25. *Open Video Systems.* The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.” The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. 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 regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

26. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: “This industry comprises establishments

primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.” The SBA has developed a small business size standard for this category, which is: all such firms having \$15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007 show that there were 659 establishments in this category that operated for the entire year. Of that number, 462 operated with annual revenues of \$9,999,999 million dollars or less, and 197 operated with annual revenues of 10 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

27. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.” We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8,995 had annual receipts of \$24,999,999 or less, and 100 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

28. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily

engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.” We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having \$29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of \$24,999,999 or less, and 16 had annual receipts ranging from not less than \$25,000,000 to \$100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

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

30. *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 appropriate size standard under SBA rules is for the category “Wired Telecommunications Carriers.” Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178

operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small.

31. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category "Wired Telecommunications Carriers." Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of such firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

32. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were 919 establishments that operated for part or all of the entire year. Of those 919 establishments, 771 operated with 99 or fewer employees, and 148 operated with 100 or more employees. Thus, under that size standard, the majority of establishments can be considered small.

33. *Audio and Video Equipment Manufacturing.* The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in

which a manufacturer is small if it has less than 750 employees. Data contained in the 2007 Economic Census indicate that 491 establishments in this category operated for part or all of the entire year. Of those 491 establishments, 456 operated with 99 or fewer employees, and 35 operated with 100 or more employees. Thus, under the applicable size standard, a majority of manufacturers of audio and video equipment may be considered small.

34. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category to include ". . . establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users."

35. In this category, the SBA has deemed an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has fewer than 500 employees. For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard.

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

37. The first category of *Teleproduction and Other Postproduction Services* "comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as

editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects." The relevant size standard for small businesses in these services is an annual revenue of less than \$29.5 million. For this category, Census Bureau Data for 2007 indicate that there were 1,605 firms that operated in this category for the entire year. Of that number, 1,597 had receipts totaling less than \$29,500,000. Consequently we estimate that the majority of Teleproduction and Other Postproduction Services firms are small entities that might be affected by our proposed actions.

38. The second category of *Court Reporting and Stenotype Services* "comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials." The size standard for small businesses in these services is an annual revenue of less than \$7 million. For this category, Census Bureau data for 2007 show that there were 2,706 firms that operated for the entire year. Of this total, 2,590 had annual receipts of under \$5 million, and 19 firms had receipts of \$5 million to \$9,999,999. Consequently, we estimate that the majority of Court Reporting and Stenotype Services firms are small entities that might be affected by our proposed action.

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

39. The *FNPRM* invites comment on whether the Commission should impose closed captioning synchronization requirements on apparatus. Such synchronization requirements could provide that all apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives. The *FNPRM* invites comment on the extent to which apparatus are the cause of synchronization problems, and on the means by which manufacturers could address closed caption synchronization. The *FNPRM* also asks whether video programming owners, providers, and distributors are better suited than manufacturers to ensure caption quality, including synchronization, and it asks about the costs and benefits of imposing caption synchronization requirements on apparatus manufacturers. Separately, the *FNPRM* seeks comment on what closed captioning requirements we should impose on manufacturers of DVD players that do not render or pass through closed captions, and on manufacturers of Blu-ray players with

regard to Blu-ray players playing Blu-ray discs and playing DVDs, including specific questions about the rendering or pass through of closed captions. The *FNPRM* also seeks comment on the costs and benefits of imposing such requirements. Information received in response to the *FNPRM* will enable the Commission to consider the costs that would be incurred by affected entities, including smaller entities.

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

40. 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.<sup>13</sup>

41. We note that, pursuant to rules and policies previously adopted in the *Report and Order* in this proceeding, the Commission may grant exemptions to the IP closed captioning rules adopted pursuant to section 202 of the CVAA where a petitioner has shown that compliance would present an economic burden (*i.e.*, a significant difficulty or expense), and may grant exemptions to the apparatus rules adopted pursuant to section 203 of the CVAA where a petitioner has shown that compliance is not achievable (*i.e.*, cannot be accomplished with reasonable effort or expense) or is not technically feasible. This exemption process enables the Commission to address the impact of the rules on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, a video programming provider's or owner's *de minimis* failure to comply with the IP closed captioning rules shall not be treated as a violation, and parties may use alternate means of compliance to the rules adopted pursuant to either section 202 or section 203 of the CVAA. Individual entities, including smaller entities, may benefit from these provisions.

42. Regarding the specific issue of synchronization requirements as discussed in the *FNPRM*, the

Commission seeks comment on whether video programming owners, providers, and distributors are better suited than manufacturers to ensure caption quality, including synchronization. The Commission also seeks comment on what requirements it should impose on apparatus, to the extent that apparatus cause closed captioning synchronization problems. Accordingly, the Commission seeks to allocate responsibilities appropriately.

43. Regarding the specific issue of DVD players that do not render or pass through closed captions and Blu-ray players as discussed in the *FNPRM*, the Commission seeks comment on the costs and benefits of imposing closed captioning requirements, including the technical aspects of what would be required to make closed captioning accessible on such devices. Accordingly, the Commission seeks to balance the costs and benefits appropriately in crafting a final rule.

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

44. None.

#### B. Paperwork Reduction Act

45. The *FNPRM* does not contain proposed information collection(s) subject to the PRA, Public Law 104–13. 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, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

#### C. Ex Parte Rules

46. *Permit-But-Disclose*. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. 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 § 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.

#### D. Filing Requirements

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

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, 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.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand

<sup>13</sup> 5 U.S.C. 603(c)(1)–(c)(4).



deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

48. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

49. *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](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### E. Additional Information

50. For additional information on this proceeding, contact Diana Sokolow, [Diana.Sokolow@fcc.gov](mailto:Diana.Sokolow@fcc.gov), or Maria Mullarkey, [Maria.Mullarkey@fcc.gov](mailto:Maria.Mullarkey@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

#### IV. Ordering Clauses

51. Accordingly, *it is ordered* that pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111-260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Further Notice of Proposed Rulemaking is adopted*, effective thirty (30) days after the date of publication in the **Federal Register**.

52. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Further Notice of Proposed Rulemaking* in MB Docket No. 11-154, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

#### PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

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

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

■ 2. Amend § 79.103 to add paragraph (c)(12) to read as follows:

#### § 79.103 Closed caption decoder requirements for all apparatus.

\* \* \* \* \*

(c) \* \* \*

(12) *Synchronization.* All apparatus that render closed captions must do so consistent with the timing data included with the video programming the apparatus receives.

\* \* \* \* \*

[FR Doc. 2013-15722 Filed 7-1-13; 8:45 am]

BILLING CODE 6712-01-P

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R1-ES-2013-0028; 4500030113]

RIN 1018-AZ38

#### Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Three Plant Species on Hawaii Island

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our October 17, 2012, proposed designation of critical habitat for three plant species (*Bidens micrantha* ssp.

*ctenophylla* (kookoolau), *Isodendron pyrifolium* (wahine noho kua), and *Mezoneuron kavaense* (uhiuhi)) on Hawaii Island under the Endangered Species Act of 1973, as amended (Act). In response to requests we received, we are reopening the comment period to allow all interested parties an opportunity to comment on the proposed designation of critical habitat and the draft economic analysis. Comments previously submitted on the proposed rule or draft economic analysis need not be resubmitted as they will be fully considered in our determinations on this rulemaking action. We also announce a public information meeting on our proposed rule and associated documents.

**DATES:** *Written Comments:* We will consider all comments received or postmarked on or before September 3, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public Information Meeting:* We will hold a public information meeting in Kailua-Kona, Hawaii, on Wednesday, August 7, 2013, from 3 p.m. to 5 p.m. (see **ADDRESSES** section, below).

**ADDRESSES:** *Document availability:* You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2012-0070, or by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

*Written Comments:* You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R1-ES-2013-0028.

(2) *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R1-ES-2013-0028; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

*Public Information Meeting:* The public information meeting will be held in the Council Chambers of the West Hawaii Civic Center located at 74-5044 Ane Keohokalole Highway, Kailua-Kona, HI 96740 (telephone 808-323-4444).

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).