

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

In the Matter of )
Wireless Emergency Alerts ) PS Docket No. 15-91
Amendments to Part 11 of the Commission’s Rules ) PS Docket No. 15-94
Regarding the Emergency Alert System )

NOTICE OF PROPOSED RULEMAKING

Adopted: March 14, 2024

Released: March 15, 2024

By the Commission: Chairwoman Rosenworcel and Commissioner Gomez issuing separate statements.

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. With this Notice of Proposed Rulemaking, we initiate a proceeding to revise the Emergency Alert System (EAS) rules<sup>1</sup> to adopt a new EAS event code for Missing and Endangered Persons “MEP”. The EAS and Wireless Emergency Alerts (WEA) systems are used to distribute tens of thousands of warnings to the public every year, providing critical notice of emergencies ranging from severe weather events, such as tornados and hurricanes, to natural disasters, such as tsunamis and wildfires, to civil emergencies, such as AMBER alerts and law enforcement warnings. These emergency alerts provide critical information and empower affected communities to take appropriate action and aid public safety officials in their efforts to address emergencies. In 2022, approximately 187,000 adults who fall outside of the criteria for AMBER Alerts went missing in the United States.<sup>2</sup> While of a widespread concern, this issue is particularly prevalent in Tribal communities, where American Indian and Alaska Native people are at a disproportionate risk of experiencing violence, murder, or vanishing;<sup>3</sup> so much so

<sup>1</sup> 47 CFR § 11.1 et. seq.

<sup>2</sup> According to the National Crime Information Center (NCIC), during 2022, roughly 547,000 persons were entered into its missing persons database. Of these entries, approximately 187,000 were 18 or older. As of December 31, 2022, there were 97,127 active missing person records, of which roughly 66,000 were 18 or older. None of these persons would have been subject to AMBER alerts, whose criteria are persons under 18. Further, although precise data on missing adults over the age of 65 (the criterion for Silver Alerts) are unavailable at this time, it is clear that many missing adults are under the age of 65. See 2022 NCIC Missing Person and Unidentified Person Statistics. https://www.fbi.gov/file-repository/2022-ncic-missing-person-and-unidentified-person-statistics.pdf/view (last visited Feb. 20, 2024). See also Lost but Not Forgotten: Finding the Nation’s Missing, https://nij.ojp.gov/topics/articles/lost-not-forgotten-finding-nations-missing, (“[O]f the 12,950 active missing persons cases in NamUs [DOJ’s forensic data site to assist investigations] as of February 2017, 5,440 (42 percent) involve missing females and 7,510 (58 percent) involve missing males. Of those, the average age of missing females and males is 30 years and 36 years, respectively, with an overall average age of 33 years for all active missing persons.”).

<sup>3</sup> Indian Affairs, Missing and Murdered Indigenous People, https://www.bia.gov/service/mmu (last visited Feb. 20, 2024).

that Congress has tasked the Department of Interior and Department of Justice (DOJ) to establish a joint commission, the Not Invisible Act Commission (NIAC), to focus on reducing violent crimes against American Indians and Alaska Natives.<sup>4</sup> The NIAC has been specifically tasked to identify, report, and respond to instances of missing and murdered Indigenous peoples (MMIP) cases, as such cases have been historically underreported or misclassified.<sup>5</sup> With this proposal to establish a dedicated MEP event code, the FCC is taking a step to facilitate the more efficient and widespread dissemination of alerts and coordinated responses to incidents involving all missing and endangered persons – including Indigenous persons – across multiple jurisdictions.<sup>6</sup>

2. Specifically, the proposed new MEP event code will allow for the transmission of “Ashanti Alerts” associated with persons missing or abducted from states, territories, or Tribal communities that fall outside of AMBER Alert notification criteria to the public over the EAS.<sup>7</sup> In doing so, we seek to advance the important public policy objective of encouraging states, territories, and Tribal governments to develop or enhance existing missing and endangered person and Ashanti Alert plans to optimize regional and nationwide search efforts for missing, endangered, or abducted persons.<sup>8</sup> We also seek to facilitate integration of those local plans into the United States Department of Justice’s (DOJ’s) National Ashanti Alert Network as required by the Ashanti Alert Act in a manner similar to that used for the AMBER Alert and Silver Alert communications networks.<sup>9</sup>

## II. BACKGROUND

3. *EAS Architecture.* The EAS is a national public warning system through which TV and radio broadcasters, cable systems, and other service providers (“EAS Participants”)<sup>10</sup> deliver alerts to the

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<sup>4</sup> Public Law 116-166, Not Invisible Act of 2019, 134 Stat. 766, (2020). *See also* “A 2021 report from the Government Accountability Office concluded that baseline data on the rates of murder or the number of missing persons from [American Indian/Alaskan Native] communities is difficult to obtain and the full scope of the problem remains unknown,” US Department of Interior, *Not One More: Findings and Recommendations of the Not Invisible Act Commission*, November 1, 2023, <https://www.justice.gov/otj/media/1322566/dl?inline> at 34 (*NIAC Not One More: Findings & Recommendations*).

<sup>5</sup> *Id.*

<sup>6</sup> Throughout this NPRM, we use the terms “Tribal community,” “Native American,” “Alaska Native,” “American Indian,” and “indigenous,” interchangeably, to be as inclusive as possible of all nomenclature utilized by Native communities in the United States. We use the term Tribal Government, specifically, in instances to refer to a Tribal Government’s designated public safety authorities and emergency management entities that would be involved in the dissemination of emergency alerts to the Tribe’s members.

<sup>7</sup> *See* Ashanti Alert Act of 2018, Pub L. 115-401, 132 Stat. 5339 (2018); 34 U.S.C. §21901, *et. seq.* Ashanti Alerts are “voluntary dissemination of information to law enforcement, media and the public about missing adults who are endangered or abducted or who have special needs or circumstances.” DOJ, *Resource Basket for Law Enforcement*, <https://www.justice.gov/tribal/mmip/resources/law-enforcement> (last visited Feb. 5, 2024).

<sup>8</sup> *See* DOJ, *Guide for Implementing or Enhancing an Endangered Missing Advisory*, March 2011, <https://www.ojp.gov/pdffiles1/ojdp/232001.pdf>.

<sup>9</sup> *See* Comments of the National Ashanti Alert Network Stakeholders Working Group and Pilot Project Participants Working Group, PS Docket Nos. 15-91 and 15-94, at 3 (filed Jan. 29, 2024) (*SWG and Pilot Project Comments*).

<sup>10</sup> The Commission’s rules currently define EAS Participants as analog radio broadcast stations, including AM, FM, and Low-power FM stations; digital audio broadcasting stations, including digital AM, FM, and Low-power FM stations; Class A television and Low-power TV stations; digital television broadcast stations, including digital Class A and digital Low-power TV stations; analog cable systems; digital cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. *See* 47 CFR § 11.11(a).

public to warn them of impending emergencies and dangers to life and property.<sup>11</sup> The primary purpose of the EAS is to furnish the President with “the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency.”<sup>12</sup> The common usage of the EAS, however, is to distribute alerts issued by state and local governments, as well as by the National Weather Service (NWS) to the public.<sup>13</sup> While EAS Participants are required to broadcast Presidential alerts (and certain test alerts designed to ensure the EAS is functioning properly), they participate in broadcasting state and local EAS alerts voluntarily.<sup>14</sup> The Commission, the Federal Emergency Management Agency (FEMA), and the NWS implement the EAS at the federal level.<sup>15</sup>

4. EAS alerts are configured using the EAS Protocol, which utilizes fixed codes to identify the various elements of an EAS alert so that each alert can deliver accurate, secure, and geographically-targeted alerts to the public.<sup>16</sup> Of particular relevance to this proceeding, the EAS Protocol utilizes a

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<sup>11</sup> See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, ET Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642, 646, para. 6 (2012) (*Fifth Report and Order*). A more detailed history of the EAS is summarized in the first Notice of Proposed Rulemaking in this docket. See *Review of the Emergency Alert System*, Notice of Proposed Rulemaking, 19 FCC Rcd 15775, 15776-77, paras. 6-8. In addition, an overview of the present organization and functioning of the EAS system is included in the *Second Report and Order*. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

<sup>12</sup> 47 CFR § 11.1. Under the part 11 rules, national activation of the EAS for a Presidential alert message, initiated by the transmission of an Emergency Action Notification (EAN) event code, is designed to provide the President the capability to transmit an alert message (in particular, an audio alert message) to the American public within ten minutes from any location at any time and must take priority over any other alert message and preempt other alert messages in progress. See, e.g., *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625, 18628, para. 8 (2005) (*First Report and Order*). See also, e.g., 47 CFR §§ 11.33(a)(11), 11.51(m), (n).

<sup>13</sup> See, e.g., *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 8149, 8152-53, para. 3 (2011).

<sup>14</sup> See 47 CFR § 11.55(a). See also *First Report and Order*, 20 FCC Rcd at 18628, para. 8. The Commission has noted previously that its authority to require participation in the EAS primarily emanates from Sections 1, 4(i) and (n), 303(r), and 706 of the Communications Act. See, e.g., *Fifth Report and Order*, 27 FCC Rcd at 643-4, para. 2; *Review of the Emergency Alert System*, Notice of Proposed Rulemaking, 19 FCC Rcd 15775, 15778-79, paras. 10-11 (2004). In addition, various other statutory provisions grant authority to regulate participation in EAS, including section 624(g) of the Act and others. We believe that sections 1, 4, 303, 335, 624, 706, and 713 of the Act, 47 U.S.C. §§ 151, 154, 303, 335, 544, 606, 613, provide ample authority for the proposals in this Notice of Proposed Rulemaking.

<sup>15</sup> The respective roles of the Commission, FEMA, and NWS are defined in a series of Executive documents. See 1981 State and Local Emergency Broadcasting System (EBS) Memorandum of Understanding Among the Federal Emergency Management Agency (FEMA), Federal Communications Commission (FCC), the National Oceanic and Atmospheric Administration (NOAA), and the National Industry Advisory Committee reprinted as Appendix K to Partnership for Public Warning Report 2004-1, *The Emergency Alert System (EAS): An Assessment*; Memorandum, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995); and Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 26, 2006).

<sup>16</sup> See 47 CFR § 11.31(c), (e).

three-character “event code” to describe the nature of the alert (e.g., “CAE” signifies a Child Abduction Emergency, otherwise known as an AMBER Alert).<sup>17</sup>

5. The EAS distributes messages in one of two ways. The first method is through a broadcast-based, hierarchical alert message distribution system in which an alert message originator (e.g., State Governor’s offices, state, county, and Tribal emergency management authorities, Public Safety Answering Points, state, county, and Tribal fire departments, National Weather Service) at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol.<sup>18</sup> The alert is then broadcast from one or more EAS Participants, and subsequently relayed from one station to another until all affected EAS Participants have received the alert and delivered it to the public.<sup>19</sup> This process of EAS alert distribution among EAS Participants is often referred as the “daisy chain” distribution architecture. Because this EAS architecture has been in place since the inception of the EAS, it is often referred to as the “legacy EAS.” The second method of distribution is an IP-based process. Specifically, since June 30, 2012, authorized emergency alert authorities have been able to distribute EAS alerts over the Internet to EAS Participants (who in turn deliver the alert to the public) by formatting those alerts in the Common Alerting Protocol (CAP) and delivering those alerts through the FEMA-administered Integrated Public Alert and Warning System (IPAWS).<sup>20</sup> This process for distributing alerts to EAS Participants represents the “CAP-based” EAS. Both the legacy and CAP-based EAS architectures are

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<sup>17</sup> *Id.*

<sup>18</sup> The EAS protocol provides very basic information about the emergency involved. *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, only baseband audio and limited data modulated into baseband audio can be sent. The preamble, header codes and EOM codes are modulated into baseband audible tones using the audio frequency-shift keying (AFSK) modulation scheme and combined with the Attention Signal and audio message for transmission to the public; EAS decoders in EAS Participant facilities monitoring that transmission demodulate the header codes to determine with the alert is valid and programmed for rebroadcast. Specifically, the EAS decoder is activated by receiving the EAS protocol preamble codes plus header codes, which are repeated three times consecutively at the start of an EAS message transmission. The EAS decoder uses bit-by-bit comparison for error detection to ensure that at least two of the three match. Depending upon the nature of the alert message, this three-time transmission (or “burst”) is followed by a two-tone Attention Signal (8 seconds in duration), which functions as an audio alert to listeners and viewers that an emergency message follows. The Attention Signal is followed by an audio message. At the end of this message, the preamble plus end of message code is transmitted three consecutive times to signal to the EAS decoder that the alert message is terminated and to return to regular programming. *See* 47 CFR § 11.31.

<sup>19</sup> In the legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant’s local audience but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives and, if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in turn, is received not only by that entity’s audience but also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and delivered it to the public. At the national level, EAS message distribution starts at Primary Entry Point (PEP) stations, which are a group of geographically diverse, high power radio stations designated and tasked by FEMA to transmit “Presidential Level” messages initiated by FEMA. *See Fifth Report and Order*, 27 FCC Rcd at 646-47, para. 7. At the state level, state governors and state and local emergency operations managers activate the EAS by utilizing state-designated EAS entry points – specifically, State Primary stations and “State Relay” stations. *See* 47 CFR § 11.21. These monitoring pathways are set forth in State EAS Plans administered by State Emergency Communications Committees. *See* 47 CFR § 11.21.

<sup>20</sup> *See* 47 CFR § 11.56; *see also Fifth Report and Order*, 27 FCC Rcd at 644-45, para. 4.

designed so that EAS Participants deliver to the public the alert content they receive from the EAS sources they monitor. Further, the EAS architecture and equipment is designed to operate automatically, without any intervention from the EAS Participant, both to minimize the risk of operator error and to facilitate EAS operation at unattended stations.<sup>21</sup>

6. *Ashanti Alerts*. Enacted in 2018, the Ashanti Alert Act was named in honor of Ashanti Billie, a 19-year-old woman who was abducted in Virginia and found dead in North Carolina in 2017.<sup>22</sup> The Ashanti Alert Act required a National Coordinator with the Department of Justice to establish a national communications network to “provide assistance to regional and local search efforts for missing adults through the initiation, facilitation, and promotion of local elements of the network, in coordination with States, Indian Tribes, units of local government, law enforcement agencies, and other concerned entities with expertise in providing services to adults.”<sup>23</sup> Ashanti Alerts are intended to aid in the search and recovery of missing persons over the age of 17 who fall outside the scope of America’s Missing: Broadcast Emergency Response (AMBER) Alerts and Silver Alerts.<sup>24</sup>

7. The Ashanti Alert Act required the DOJ to designate a National Ashanti Alert Coordinator—the Bureau of Justice Assistance (BJA)—to, among other things, work with “States and Indian Tribes to encourage the development of additional Ashanti Alert plans in their network” and “establish voluntary guidelines for States and Indian Tribes, to use in developing Ashanti Alert plans that will promote compatible and integrated Ashanti Alert plans throughout the United States”<sup>25</sup> The BJA also must coordinate and consult with the Federal Communications Commission and other federal agencies “in carrying out activities under” the Act, and also must “consult with local broadcasters and State, Tribal and local law enforcement agencies in establishing minimum standards [for issuance and dissemination of Ashanti Alerts] and in carrying out other activities” under the Act.<sup>26</sup>

8. Ashanti Alerts can provide for rapid dissemination of information to law enforcement agencies, media, and the public about adults who have been reported missing, along with suspect information.<sup>27</sup> However, these alerts are currently transmitted through a patchwork of notification systems with laws that vary based on jurisdiction; this can cause significant delay in the dissemination of these alerts. Establishing the MEP event code for missing and endangered person alerts should create uniformity in the alert process to help locate missing individuals who are older than the age for which an AMBER alert may be issued (i.e., individuals over the age of 17) and either suffer from a documented mental or physical disability, are missing under circumstances where their physical safety may be in danger, or where their disappearance may not have been voluntary – including abduction or kidnapping.<sup>28</sup> The alerts should be limited to the geographic area that the missing person could reasonably reach and should include to the extent possible the circumstances of the missing person’s disappearance, their

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<sup>21</sup> See *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1822-23, paras. 103-104 (1994) (subsequent history omitted) (*1994 Report and Order*).

<sup>22</sup> DOJ, Fact Sheet, *National Ashanti Alert Network* (July 2020) [bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/National-Ashanti-Alert-Network-Fact-Sheet.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/National-Ashanti-Alert-Network-Fact-Sheet.pdf) (“*Ashanti Alert Fact Sheet*”).

<sup>23</sup> Pub. Law 115-401 (2018) Sec. 202 (a).

<sup>24</sup> See 34 U.S.C. § 21901, et. seq. See also BJA, *Ashanti Alert Act National Notification System – Overview*, <https://bja.ojp.gov/program/ashanti-alert/overview> (last visited Feb. 5, 2024) (“*Ashanti Alert Notification System Overview*”); *Ashanti Alert Fact Sheet*.

<sup>25</sup> See 34 U.S.C. § 21903(a) and (b).

<sup>26</sup> 34 U.S.C. § 21903(c).

<sup>27</sup> *Ashanti Alert Fact Sheet*.

<sup>28</sup> See 34 U.S.C. §§ 21901(7), 21904(b)(3); *SWG and Pilot Project Group Comments* at 3.

physical and mental condition, and the modes of transportation available to them.<sup>29</sup>

9. *Savanna's Act*. Savanna's Act was named after Savanna LaFontaine-Greywind, a pregnant member of the Spirit Lake Tribe who was found brutally murdered in the Red River of North Dakota in 2017.<sup>30</sup> The Act sought to clarify federal, state, Tribal and local law enforcement responsibilities with respect to the collecting and sharing of data “related to missing or murdered Indian men, women, and children, regardless of where they reside. . . and directs U.S. attorneys to develop regionally appropriate guidelines for responding to missing or murdered Indians.”<sup>31</sup> The Act further calls for establishing guidance for “best practices in conducting searches for missing persons on and off Indian land.”<sup>32</sup>

10. Savanna's Act was signed into law along with the Not Invisible Act on October 10, 2020; both Acts specifically called attention to the need for law enforcement coordination in addressing violent crimes against American Indians and Alaska Natives. The *Not One More: Findings and Recommendations of the Not Invisible Act Commission* released on November 1, 2023, emphasized the difficulty in gathering data on missing and endangered Indigenous persons, and stressed the need for adopting practices that assist federal, state, territorial, and Tribal authorities in coordinating and collaborating on the reporting and response to missing persons cases.<sup>33</sup>

11. *Resolution adopted by the National Congress of American Indians*. In late 2023, Native Public Media sponsored a resolution calling for the Commission to establish an MEP event code to “enable a more rapid and coordinated response to incidents involving missing indigenous persons.”<sup>34</sup> NCAI Resolution #NO-23-001 noted that “Native Americans face significant challenges in addressing the issue of missing and endangered adults, requiring immediate attention and action,” and the current EAS event codes failed to account for these unique missing person circumstances.<sup>35</sup> The NCAI further noted that their “communities have historically been disproportionately affected by missing person cases, with Native Americans constituting 2.5% of all missing person cases despite comprising only 1.2% of the U.S. population, as reported by the National Crime Information Center, underscoring the urgent need for targeted measures.”<sup>36</sup> The General Assembly of the National Congress of American Indians (NCAI) adopted this resolution in November 2023.<sup>37</sup> The NCAI, according to Native Public Media, envision using the MEP event code to broadcast timely and critical alerts across the nation using IPAWS.<sup>38</sup>

12. On January 29, 2024, the National Ashanti Alert Network Stakeholder Working Group

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<sup>29</sup> See 34 U.S.C. §§ 21901, *et. seq.*

<sup>30</sup> National Indigenous Women's Resource Center, *Savanna's Act Fact Sheet*, <https://www.niwrc.org/sites/default/files/files/reports/Fact%20Sheet-Savanna%27s%20Act-New.pdf> (last visited Feb. 20, 2024). See also, 25 U.S.C. § 5701, *et. seq.*

<sup>31</sup> 25 U.S.C. § 5701.

<sup>32</sup> 25 U.S.C. § 5704.

<sup>33</sup> *NIAC Not One More: Findings & Recommendations*, Finding C, <https://www.justice.gov/otj/media/1322566/dl?inline> at 100.

<sup>34</sup> *Tribes, Native Public Media Urge FCC to Establish Missing and Endangered Event Code*, Navajo-Hopi Observer (Dec 15, 2023), <https://www.nhnews.com/news/2023/dec/05/guest-column-tribes-native-public-media-urge-fcc-e/>.

<sup>35</sup> National Congress of American Indians (NCAI), *To Establish a National Federal Communications Commission Event Code for Missing and Endangered Persons*, Resolution #NO-23-001 (2023), <https://ncai.assetbank-server.com/assetbank-ncai/assetfile/5305.pdf>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See *id.*



(SWG) and Pilot Project Participants Working Group (Pilot Project Group) noted that there was no current “one size fits all” approach to missing and endangered person alerts for adults, even those as applied to senior citizens.<sup>39</sup> They asked the Commission to establish a dedicated alerting system event code for missing and endangered persons, “MEP”.<sup>40</sup> Notably, this request and the NCAI’s resolution calling for an MEP event code both define situations that meet the Ashanti Alert Act activation criteria, suggesting significant if not complete overlap between the circumstances in which the MEP event code they envision should be used and when Ashanti Alerts are meant to apply.<sup>41</sup>

### III. DISCUSSION

13. We propose to revise the Commission’s EAS rules to add a new “MEP” event code for all EAS alerts about missing and endangered person incidents that do not meet the criteria for an AMBER Alert. Currently, alert originators who issue missing and endangered person alerts that do not meet the criteria of an AMBER Alert, use a variety of event codes to issue such alerts.<sup>42</sup> For example, Florida has a “Purple Alert Plan” for alerts requested through local law enforcement; the alerts are sent through text and email, voluntarily broadcast through media, and posted on Florida Department of Transportation and Florida Department of Highway Safety and Motor Vehicles until the missing person is located.<sup>43</sup> Similarly, Texas has the Coordinated Law Enforcement Adult Rescue (CLEAR) Alert program which is designed to close the gap between missing children and senior citizens.<sup>44</sup> Texas law enforcement agencies request activation of the alert through the Texas Department of Public Safety (DPS) which may be activated for a maximum of 24-hours (although that may be extended by request).<sup>45</sup> Additionally, there are regional alert networks that operate independently of the State Network; those regional programs must be contacted separately to request activation.<sup>46</sup> We seek comment on how the individual local, state, territorial, and Tribal authority missing and endangered person plans are working in practice.

14. EAS Participants have discretion as to whether they issue EAS alerts other than the National Alert.<sup>47</sup> Would EAS Participants be more likely to retransmit missing and endangered person alerts if we create a dedicated MEP event code? To what extent do EAS Participants retransmit generic event codes, such as Civil Emergency Message (CEM) or Law Enforcement Warning (LEW) under which non-AMBER missing and endangered person alerts are currently sent? Will creating a specific event code for missing and endangered persons be beneficial to alert originators who may use it and EAS Participants who may retransmit it? Will it help public safety officials and others investigating the number of such incidents? Will it benefit the public?

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<sup>39</sup> *SWG and Pilot Project Group Comments*.

<sup>40</sup> *Id.*

<sup>41</sup> *See id.*; 34 U.S.C. § 21904

<sup>42</sup> *See* PBS WARN, <https://warn.pbs.org/> (last visited Feb. 15, 2024). To find such alerts, change the search criteria to “All Alerts” and enter “missing” in the search window. The “Local Area Emergency” and “Law Enforcement Warning” event codes are the most commonly used event codes for missing and endangered person alerts that do not meet the criteria of an AMBER alert, which would use the “Child Abduction Emergency” event code.

<sup>43</sup> Florida Department of Law Enforcement, Missing Endangered Persons Information Clearinghouse, Florida Purple Alert Criteria and FAQs, <https://www.fdle.state.fl.us/PurpleAlerts/Frequently-Asked-Questions.aspx> (last visited Feb. 20, 2024).

<sup>44</sup> Texas Department of Public Safety, <https://www.dps.texas.gov/section/intelligence-counterterrorism/clear-alert> (last visited Feb. 20, 2024).

<sup>45</sup> Texas Department of Public Safety, Request Alert Activation, <https://www.dps.texas.gov/section/intelligence-counterterrorism/request-alert-activation> (last visited Feb. 20, 2024).

<sup>46</sup> *Id.*

<sup>47</sup> 47 CFR §§ 11.51; 11.52; 11.54.

15. We propose that by adopting the dedicated MEP event code for EAS, our rules can help facilitate the delivery of Ashanti Alerts in a uniform and consistent manner. We seek comment on this approach. Will creating such an event code facilitate the transmission of Ashanti Alerts and thus promote the establishment of a national communications network “to provide assistance to regional and local search efforts for missing adults,” as called for in the Ashanti Alert Act?<sup>48</sup> Several developments support taking this action. The Ashanti Alert Act encourages states, territories, and Tribal governments to develop or enhance their Ashanti Alert or missing and endangered person plans. It also seeks to facilitate the integration of those plans into a national network to assist and optimize regional and local search efforts for missing or endangered adults.<sup>49</sup> We expect that adopting a new “MEP” event code will facilitate the rapid and coordinated delivery of alert notifications about missing and endangered persons to the public in a uniform and consistent manner. This, in turn, would promote the development, enhancement, and integration of a nationwide communications network for Ashanti Alert and Ashanti Alert compliant plans and coordination of officials and stakeholders within those plans, as contemplated by the Ashanti Alert Act.

16. Specifically, we propose to amend Section 11.31(e) of the EAS rules to add a new “MEP” event code to the codes contained within the EAS Protocol. We seek comment on this proposal. Would having an event code be consistent with BJA’s guidance, and allow for the issuing of Ashanti alerts, i.e., alerts related to (1) individuals over the age of 17; (2) missing adults who have special needs or circumstances; and (3) missing adults who are endangered or who have been abducted or kidnapped.<sup>50</sup> Should the MEP event code be limited to the criteria for an Ashanti Alert? How would limiting this event code to Ashanti Alert criteria impact missing and endangered person alerts that did not meet the criteria of an AMBER alert or an Ashanti alert? Should other criteria be considered as well? For example, could such an event code be used for missing children events that do not meet the criteria for an AMBER alert? Could such an event code be used for Silver Alerts? What are the benefits of having one event code for all missing and endangered person events that do not meet the criteria of an AMBER alert vis a vis one more limited in scope? What are the consequences of only having one such code? As with other non-Presidential alerts, EAS Participants’ carriage of Ashanti Alerts and use of the MEP event code would be voluntary. We seek comment on these proposals.

17. *Efficacy of the EAS as a mechanism for delivering Ashanti Alerts.* We seek comment on the efficacy of the EAS as a mechanism for the delivery of Ashanti Alerts. For over two decades, the EAS has proven to be an effective method of alerting the public and saving lives and property.<sup>51</sup> EAS Participants continue to voluntarily transmit thousands of alerts and warnings annually regarding severe weather threats, child abductions, law enforcement officials’ safety, and other local emergencies.<sup>52</sup>

18. We seek comment on whether EAS could accommodate missing and endangered person alerts, including Ashanti Alerts, as effectively as it does these other types of alerts. Specifically, are there constraints that would impede the ability of the EAS to contain the information required under the Ashanti Alert Act<sup>53</sup> and envisioned by BJA guidance? Can the relevant information be communicated within a two-minute time frame, for example?<sup>54</sup> We note that EAS alerts delivered over the IPAWS can

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<sup>48</sup> 34 U.S.C. § 21902(a).

<sup>49</sup> See 34 U.S.C. § 21901, *et. seq.* See also *Ashanti Alert Fact Sheet*.

<sup>50</sup> *Ashanti Alert Fact Sheet*. See 34 U.S.C. § 21901(7), 34 U.S.C. § 21904(b)(3).

<sup>51</sup> See *Proposed Action to Improve Accessibility and Performance of the Wireless Emergency Alerts (WEA)*, PS Docket Nos. 15-91 and 15-94, *Fifth Report and Order*, 27 FCC Rcd 642, 646, para. 6.

<sup>52</sup> FCC, *Report: August 11, 2021 Nationwide EAS Test* at 23 (2021), <https://docs.fcc.gov/public/attachments/DOC-378861A1.pdf>.

<sup>53</sup> 34 U.S.C. § 21904(b)(1).

<sup>54</sup> 47 CFR § 11.33(a)(9).



contain detailed text files, non-English alerts, or other content-rich data that is not always available in EAS alerts delivered via the broadcast-based daisy chain.<sup>55</sup> Do Ashanti Alerts routinely contain extra text files or other data-rich content that would benefit from the capabilities of IPAWS? Would it have a negative impact on the value of an EAS dedicated MEP event code that such data-rich content may not be delivered to all EAS Participants, depending on whether they receive the alert through IPAWS or through the broadcast-based daisy chain?

19. Currently, EAS Alerts are limited to the geographic contours and service areas of broadcasters and cable service providers. Are there any geographic or service area limitations<sup>56</sup> that would pose challenges to the effectiveness of missing and endangered person alerts, including Ashanti Alerts, which – per statutory requirements – must be delivered to “geographic areas that the missing adult could reasonably reach, considering the circumstances and physical and mental condition of the missing adult, the modes of transportation available to the missing adult, and the circumstances of the disappearance?”<sup>57</sup> How should the term “reasonably” be construed in this context and how does such construction impact EAS Participants’ ability to disseminate these alerts? Are there differences between EAS Participants (e.g., small versus large cable operators) that affect the ability to target geographic areas as prescribed for the alerts?

20. *Implementation of the proposed MEP event code.* We seek comment on whether establishing a dedicated MEP event code would aid in the development of the national communications network contemplated by the Ashanti Alert Act.<sup>58</sup> Would MEP as a dedicated EAS event code provide a central and organizing element for missing and endangered person and Ashanti Alert plans across the nation and, thus, facilitate the work of the National Ashanti Alert Network?

21. We are aware that several states, territories, and Tribal governments have Ashanti Alert plans, Ashanti Alert Act compliant plans, missing and endangered person plans, or have legislative proposals for such plans.<sup>59</sup> We observe that implementation of these plans vary.<sup>60</sup> We seek comment on how many states, territories, and Tribal governments, in fact, have such plans or proposals. Where such

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<sup>55</sup> FCC, Public Safety & Homeland Security Bureau, *Report: September 28, 2016, Nationwide EAS Test* at 5 n.2, 6, 16-17 (2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0421/DOC-344518A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/DOC-344518A1.pdf) (last visited Feb. 9, 2024).

<sup>56</sup> See 47 CFR § 11.2.

<sup>57</sup> 34 U.S.C. § 21904(b)(2).

<sup>58</sup> 34 U.S.C. § 21902(a).

<sup>59</sup> See, e.g., Ark. Code Ann. § 12-12-205 (West 2024); Colo. Rev. Stat. Ann. § 16-2.7-103 (West 2024); Conn. Gen. Stat. Ann. § 29-1i (West 2024); Fla. Stat. § 937.021 (West 2024); Idaho Code Ann. § 67-2922 (West 2024); 50 Ill. Comp. Stat. Ann. 722/5 (West 2024); Ind. Code Ann. § 12-10-18-0.5 (West 2024); Kan. Stat. Ann. § 75-712c (West 2024); Minn. Stat. Ann. § 299C.53 (West 2024); Mont. Code Ann. § 44-2-407 (West 2024); N.J. Stat. Ann. § 52:17B-213 (West 2024); N.M. Stat. Ann. § 29-15-2 (West 2024); N.Y. Exec. Law § 837-f-2 (McKinney 2024); N.C. Gen. Stat. Ann. § 143B-1014 (West 2024); N.D. Cent. Code Ann. § 12-68-01 (West 2024); Okla. Stat. Ann. tit. 63, § 1-1990.10 (West 2024); 35 Pa. Stat. Ann. § 7025.1 (West), PA AR 9-35 Missing Endangered Persons Advisory System, <https://www.psp.pa.gov/contact/RTKL%20DOCUMENTS/AR%209-35.pdf>; Tex. Gov't Code § 411.462 (West 2024); Va. Code Ann. § 52-34.12 (West 2024); WY LEGIS 45 (2023), 2023 Wyoming Laws Ch. 45 (H.B. 18); PR: 25 L.P.R.A. § 986a (West 2024); Wyo. Stat. Ann. § 24-12-102 (West 2024). See also NCCMP's *Ashanti Alert Notification System*, [Ashanti Alerts - NC Center for Missing Persons \(ncdps.gov\)](http://www.ncdps.gov), (last visited Feb. 5, 2024); *LEGISLATIVE WATCH WYOMING: Governor Signs Law to Expand State's Missing Persons Alert Systems*, The Wyoming Truth, <https://wyomingtruth.org/legislative-watch-wyoming-governor-signs-law-to-expand-states-missing-persons-alert-systems/> (last visited Feb. 5, 2024); State Launches M.I.P.A. – Missing Indigenous Person Alert System, WSP (wa.gov), <https://www.wsp.wa.gov/2022/06/30/state-launches-m-i-p-a-missing-indigenous-person-alert-system/> (last visited Feb. 5, 2024); NCCMP's *Ashanti Alert Notification System*, [Ashanti Alerts - NC Center for Missing Persons \(ncdps.gov\)](http://www.ncdps.gov), (last visited Feb. 5, 2024).

<sup>60</sup> See *id.*

plans or proposals exist and what are their core components? Would a dedicated EAS event code help ensure that Ashanti Alerts and related outreach are undertaken in a consistent manner nationally? We seek comment on the distribution methods states, territories, and Tribal governments currently employ to deliver Ashanti Alerts or other alerts for missing and endangered persons. To the extent they use different distribution methods to deliver alerts, do these various distribution methods detract from the effectiveness of the alerts? We also seek comment on the experiences of states, territories, and Tribal governments that have adopted missing and endangered person alerts or Ashanti Alerts as part of their alerting systems. Moreover, would the adoption of MEP as a dedicated EAS event code encourage EAS Participants to deliver missing and endangered person alerts, including Ashanti Alerts?

22. We additionally ask whether the availability of a dedicated EAS event code would promote the adoption or enhancement of Ashanti Alerts or missing and endangered person alerts throughout the nation. Would a dedicated EAS event code help integrate existing plans into a coordinated national network? Would the ability of law enforcement agencies to use existing EAS distribution networks alleviate any burden associated with designing and implementing individual missing and endangered person or Ashanti Alert plans? Would the implementation of a dedicated EAS event code encourage States and Tribal governments that do not have missing and endangered person or Ashanti Alert plans to adopt one? Are there widely-recognized “best practices” for Ashanti Alert plans? If so, to what extent would the adoption of the proposed MEP event code enhance the effectiveness of those “best practices”?

23. Has the lack of a dedicated EAS event code impeded the adoption of missing and endangered person or Ashanti Alert plans? Would utilizing the EAS structure help integrate existing plans into a coordinated national framework? Would integrating existing missing and endangered person and Ashanti Alert plans into the EAS structure help individual states, territories, and Tribal governments work together when missing adults have been, or potentially have been transported across state lines, as envisioned by the Ashanti Alert Act?

24. *Missing and Endangered Indigenous Persons.* We seek comment on whether we should consider an additional dedicated EAS event code for missing Indigenous persons on and off Tribal land. As we have recognized above, Native communities “have historically been disproportionately affected by missing person cases, with Native Americans constituting 2.5% of all missing person cases despite comprising only 1.2% of the U.S. population...”<sup>61</sup> Would establishing a dedicated event code for missing Indigenous persons aid in resolving this disparity? Would such a dedicated event code help law enforcement in locating missing Indigenous persons? Who would be considered “Indigenous” for use purposes of this code? Alternatively, would it be more effective to use our proposed MEP code, rather than using a separate dedicated event code?

25. *Protecting Safety, Privacy and Civil Liberties.* We seek comment to ensure that missing and endangered person alerts, including Ashanti Alerts, will provide for the protection of the civil liberties and sensitive medical information of missing adults as required by the Ashanti Alert Act.<sup>62</sup> Are there any particular privacy or other civil liberties concerns that we should consider in implementing the proposed MEP event code? How can we ensure that any alerts comply with all applicable Federal, State, Tribal and local privacy laws and regulations?<sup>63</sup> Are there particular standards that we should adopt in

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<sup>61</sup> National Congress of American Indians (NCAI), *To Establish a National Federal Communications Commission Event Code for Missing and Endangered Persons*, Resolution #NO-23-001 (2023), <https://ncai.assetbank-server.com/assetbank-ncai/assetfile/5305.pdf>. See generally, *NIAC Not One More: Findings & Recommendations* (Noting the need to address the high rates of missing, murdered and trafficked AI/AN people in recent years and discussing potential improvements to alerting systems in order to address the issue).

<sup>62</sup> See 34 U.S.C. § 21904(b)(4).

<sup>63</sup> See 34 U.S.C. § 21904(b)(4)(A). See also, PBS WARN, <https://warn.pbs.org/> (last visited Feb. 15, 2024).

order to provide protections against domestic violence?<sup>64</sup> We seek comment on these and any other safety, privacy and civil liberties concerns.

26. *Public Awareness and Outreach.* We seek comment on how the public may respond to an MEP event code. Would establishing MEP as a dedicated EAS event code allow law enforcement to provide a warning that the public recognizes immediately as an alert for a missing or endangered person? Would a dedicated event code convey the appropriate sense of urgency to the public and galvanize the public awareness necessary to aid in the finding of missing or endangered adults? Would a dedicated event code facilitate consistent and effective public outreach educating the public to recognize and respond to “Ashanti Alerts”?

27. We seek comment on what actions states, territories, and Tribal governments have taken to educate the public on missing and endangered person and Ashanti Alerts and the appropriate responses to those alerts. Are there model Public Service Announcements (PSAs) in use that educate the public about missing and endangered person or Ashanti Alerts? How often have such alerts been activated and through what means or media have they been issued? How has the public reacted to these alerts?<sup>65</sup> We encourage commenters to provide examples of all available public responses to missing and endangered person and Ashanti Alerts that have been delivered since the adoption of the Ashanti Alert Act and BJA’s Ashanti Alert guidance.

28. *Timeframe.* We seek comment on the timeframe in which MEP as a dedicated EAS event code for missing and endangered person alerts, including Ashanti Alerts, could be implemented. In the *BLU Report and Order*, the Commission required EAS equipment manufacturers to integrate BLU EAS event codes into equipment yet to be manufactured or sold and to make necessary software upgrades available to EAS Participants, no later than twelve months from the effective date of the rules, reasoning that the prompt deployment of alerts using the new codes would be consistent with the goal of public safety.<sup>66</sup> We believe that adding the proposed MEP event code triggers similar technical and public safety requirements regarding equipment readiness. We therefore propose that EAS equipment manufacturers integrate the MEP event code for missing and endangered person alerts, including Ashanti Alerts, into equipment yet to be manufactured and make necessary software upgrades available to EAS Participants, no later than twelve months from the effective date of the rules. We seek comment on this proposal and, if commenters disagree with our analysis or proposed timeframe, we invite them to specify alternatives and the specific technical bases for such alternatives.

29. With regard to EAS Participants, we note that in the *BLU Report and Order* the Commission allowed EAS Participants to implement the new event codes on a voluntary basis until their equipment was replaced.<sup>67</sup> The Commission noted that it took this approach in the past when adopting other new EAS event codes, and that the record did not reflect any basis to take a different approach.<sup>68</sup> Accordingly, we propose a similar approach here, allowing EAS Participants to upgrade their equipment on a voluntary basis through new equipment programmed to contain the code or through a software upgrade to install the code into equipment already in place. We seek comment on this approach.

30. *Wireless Emergency Alerts.* The Wireless Emergency Alert system is a tool for authorized federal, state, local, and Tribal government entities to geographically target alerts and warnings to the WEA-capable mobile devices of participating commercial mobile service providers’ subscribers. Many people within the United States depend on WEA, as well as EAS, for public alerts and

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<sup>64</sup> See 34 U.S.C. § 21904(b)(4)(C).

<sup>65</sup> See PBS WARN, <https://warn.pbs.org/> (last visited Feb. 15, 2024).

<sup>66</sup> See *Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 32 FCC Rcd 10812, paras. 21 and 22 (2017) (*BLU Report and Order*”).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

warnings.<sup>69</sup> The National Ashanti Alert Network Stakeholder Working Group and Pilot Project Participants Working Group have also called for a dedicated event code for missing and endangered persons, including adults and certain children who might not fit the criteria outlined for AMBER alerts.<sup>70</sup> We note, however, that WEA does not use event codes in the same manner as EAS. Rather, alert origination software and FEMA IPAWS map EAS event codes onto WEA handling codes that correspond to the alert message classifications that the Commission authorizes for issuance over WEA: National Alert, Imminent Threat Alert, AMBER Alert, and Public Safety Message.<sup>71</sup> What effect would the adoption of an MEP event code for EAS have on WEA? Should we revise our WEA rules to create a separate alert message classification for missing endangered persons alerts? Should alert origination software and FEMA IPAWS map the MEP code onto the AMBER Alert message classification, the Public Safety Message Classification, or a new alert message classification specifically for missing and endangered person alerts?<sup>72</sup> If missing and endangered person alerts, including Ashanti Alerts, merit a unique WEA alert message classification, should we require Participating CMS Providers to enable alert originators or the public to silence the audio attention signal and/or vibration cadence when they issue a missing and endangered person alert? If an alert were deliverable without the audio attention signal and/or without the vibration cadence, would Alert Originators be more likely to use WEA when a person was missing and/or endangered?

31. *Benefits and costs.* We seek comment on the total benefits and costs associated with the proposed addition of the MEP event code to the EAS. For those states, territories, or Tribal governments that have adopted missing and endangered person or Ashanti Alert plans, have those alerts been effective in locating missing, abducted, and/or endangered persons? Would a dedicated EAS code produce a more efficient result than utilizing an existing event code or an alternate delivery mechanism?

32. Would the adoption of a dedicated EAS event code help facilitate a partnership similar to AMBER Alerts? AMBER Alerts represent a voluntary partnership between law-enforcement agencies, broadcasters, transportation agencies, and the wireless industry to activate an urgent bulletin in the most serious child-abduction cases.<sup>73</sup> DOJ reports that 180 of the 181 AMBER Alerts issued in 2022 resulted in a recovery.<sup>74</sup> As of December 31, 2023, 1,186 children were successfully recovered through the AMBER Alert system and 165 children were rescued because of wireless emergency alerts.<sup>75</sup> We seek comment on whether statistical information concerning AMBER Alerts is relevant to missing and endangered person alerts. Is it reasonable to expect a similar success rate for missing and endangered person alerts, including Ashanti Alerts? Would the adoption of a dedicated EAS event code reduce the time to find a lost or abducted person?

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<sup>69</sup> See, e.g., DOJ, Office of Community Oriented Policing Services, Rafael Ramos and Wenjian Liu National Blue Alert Report 2017 to Congress at 8 (2017), [https://cops.usdoj.gov/pdf/blue-alert/2017\\_report.pdf](https://cops.usdoj.gov/pdf/blue-alert/2017_report.pdf).

<sup>70</sup> See SWG and Pilot Project Group Comments at 2 (“[B]oth SWG and Pilot Project states have noted a need for a missing and endangered person code that would supplement the current Child Abduction Emergency (CAE) and Blue Alert (BLU) IPAWS codes. Currently no code exists for missing and endangered persons.”).

<sup>71</sup> See 47 CFR § 10.400.

<sup>72</sup> Public Safety Messages are only eligible for issuance in connection with another Alert Message Classification. See 47 CFR § 10.400(d). AMBER Alerts have specific criteria for issuance over WEA that all missing and endangered person alerts will not meet. See 47 CFR § 10.400(c). Imminent Threat Alerts must meet criteria for urgency, severity, and certainty that all missing endangered person alerts will not meet. See 47 CFR § 10.400(b). Public Safety Messages are only eligible for issuance in connection with another Alert Message classification. See 47 CFR § 10.400(d).

<sup>73</sup> DOJ, *Amber Alert Report 2022*, p. 7 (2023), <https://amberalert.ojp.gov/publications/2022-amber-alert-report.pdf>.

<sup>74</sup> *Id.*

<sup>75</sup> AMBER Alert, <https://amberalert.ojp.gov/> (last visited Feb. 5, 2024).



33. We seek comment on whether introducing a dedicated EAS event code would help save the lives. For example, would using a dedicated EAS event code facilitate faster information sharing and dissemination of information to the public? Could it potentially provide an additional path of communication to others who may be best positioned to quickly provide assistance, including the media and off-duty public safety official? Could this save lives, not just of those whose disappearance prompts an alert but of others who might otherwise be harmed by the emergency? We seek comment on these and other potential benefits and cost reductions.

34. We also seek comment on the costs of the proposed event code. We believe that adopting a dedicated EAS event code, “MEP,” presents technical issues similar to the ones the Commission encountered when creating Blue Alert codes.<sup>76</sup> In the *BLU Report and Order*, the Commission noted that the record indicated that the new alert codes could be implemented by EAS Participants via minimally burdensome and low-cost software downloads; the Commission expected the labor required to download and update the software would not exceed 5 hours for each EAS participant.<sup>77</sup> We believe that the same costs would apply to the adoption of an MEP event code for missing and endangered persons, including Ashanti Alerts. Therefore, we tentatively conclude that the implementation costs for adding a dedicated MEP event code would be approximately \$12 million, adjusted for inflation.<sup>78</sup> We seek comment on this analysis and on the cost to EAS equipment manufacturers to create software updates, test these updates, supply them to their customers, oversee these updates, and provide any related customer support.

35. We note that EAS Participants are required to have equipment that would be capable, at a minimum, of being upgraded by software to accommodate EAS modifications like what we propose here.<sup>79</sup> We also see no reason why a new event code could not be bundled with a software upgrade that

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<sup>76</sup> See *BLU Report and Order*, 32 FCC Rcd at 10815-16, paras. 8-11.

<sup>77</sup> *BLU Report and Order*, 32 FCC Rcd at 10824-26, paras. 24-27.

<sup>78</sup> We calculate the total cost as follows: \$91.89/hour × 5 hours × 25,522 broadcasters, cable headends, and DBS and SDARS providers = \$11,726,083, which we round to \$12 million. Using an average hourly wage of \$60.07 for software and web developers, programmers, and testers, and factoring in a 45% markup of hourly wage for benefits, and a 5.5% inflation adjustment between 2022 and 2023, we estimate an hourly wage of \$91.89. See Press Release, Bureau of Labor Statistics, National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2022, at <https://www.bls.gov/news.release/ocwage.t01.htm> (showing that the hourly median wage for software and web developers, programmers, and testers is \$60.07). According to the Bureau of Labor Statistics, as of September 2023, civilian wages and salaries averaged \$30.35/hour and benefits averaged \$13.58/hour. Total compensation therefore averaged \$30.35 + \$13.58 = \$43.93. See Press Release, Bureau of Labor Statistics, Employer Costs for Employee Compensation – September 2023 (Dec. 15, 2023), <https://www.bls.gov/news.release/pdf/ecec.pdf>. Using these figures, benefits constitute a markup of \$13.58/\$30.35 = 45%. We therefore markup wages by 45% to account for benefits. See Federal Reserve Bank of St. Louis, *Average Hourly Earnings of All Employees, Total Private (CES0500000003)*, <https://fred.stlouisfed.org/series/CES0500000003> (last visited Feb. 14, 2024) (showing that according to Bureau of Labor Statistics data the average hourly private wage increased by 5.5% between May 2022 and August 2023). The figure 25,519 includes 21,380 broadcaster stations and 4,139 headends. With two direct broadcast satellite (DBS) providers and one satellite digital audio radio service (SDARS) provider, the total number of providers is 25,522. See *Communications Marketplace Report*, FCC 22-103, 2022 Communications Marketplace Report, at 128-29, paras. 186-87 (Dec. 30, 2022) (stating that Sirius XM is the only SDARS provider and DIRECTV and DISH Network are the only two DBS providers); *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*December 2023 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf> (stating that there were 33,428 broadcast stations in the United States as of Dec. 31, 2023, from which we subtract 12,048 FM translators and boosters, and VHF and UHF translators that do not originate programming, for a total number of affected broadcast stations of 21,392); S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022) (stating that there were 4,139 cable headends in the United States).

<sup>79</sup> See *NWS Report and Order*, 31 FCC Rcd at 7924, para. 22 n.77.

EAS Participants would otherwise install anyway, during the regular course of business. We seek comment on this analysis.

36. Finally, are there costs or benefits that should be considered that are not captured in the above discussion? If commenters disagree with our analysis or calculations, they should specify alternative methods and the specific technical bases for such alternatives. We seek comment on whether there are alternative or additional measures that the Commission could take to improve the introduction of missing and endangered person alerts, including Ashanti Alerts, over the EAS to promote the important public policy objective of enabling a rapid and coordinated response to incidents involving missing and endangered persons.

37. *Tribal Consultation.* We anticipate that any revisions to our rules implementing a dedicated “MEP” event code would benefit from Tribal consultation. We therefore direct the Office of Native Affairs and Policy (ONAP) to coordinate government-to-government consultation with Tribal Nations about the topics raised in this NPRM. ONAP will announce the commencement of a Tribal consultation via public notice. Tribal Nations may also notify ONAP of their desire for consultation via email to [Native@fcc.gov](mailto:Native@fcc.gov).

#### IV. PROCEDURAL MATTERS

38. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>80</sup> 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 the memorandum summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

39. In light of the Commission’s trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in this proceeding.<sup>81</sup> Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.<sup>82</sup> However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission

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<sup>80</sup> 47 CFR §§ 1.1200-1.1216.

<sup>81</sup> See 47 CFR § 1.1200(a).

<sup>82</sup> 5 U.S.C. §§ 551 *et seq.*



decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings<sup>83</sup> and exempt from the prohibitions during the Sunshine Agenda period.<sup>84</sup> To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

40. *Comment Filing Procedures.* Pursuant to 47 CFR § 1.415 and 47 CFR § 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).<sup>85</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>86</sup>

41. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>87</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>88</sup> Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. Written public comments are requested in the IRFA. These comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

42. *Paperwork Reduction Analysis.* This document does not contain proposed information collections 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.<sup>89</sup>

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<sup>83</sup> See generally 47 CFR § 1.1206.

<sup>84</sup> See *id.* § 1.1203.

<sup>85</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

<sup>86</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>87</sup> See 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, Title II, 110 Stat. 857 (1996).

<sup>88</sup> 5 U.S.C. § 605(b).

<sup>89</sup> See 44 U.S.C. § 3506(c)(4).

43. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.<sup>90</sup>

44. *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](mailto:fcc504@fcc.gov) or call 1-888-CALL-FCC (voice).

45. *Additional Information.* For additional information on this proceeding, please contact David Kirschner, Public Safety and Homeland Security Bureau, at [david.kirschner@fcc.gov](mailto:david.kirschner@fcc.gov) or (202) 418-0695.

## V. ORDERING CLAUSES

46. Accordingly, **IT IS ORDERED** that pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this *Notice of Proposed Rulemaking* **IS ADOPTED**.

47. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>90</sup> 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

**APPENDIX A**

**Proposed Rules**

For the reasons discussed in this document, the Federal Communications Commission proposes to amend 47 CFR part 11 to read as follows:

**PART 11 – EMERGENCY ALERT SYSTEM (EAS)**

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

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g), 606, 1201, 1206.

2. Amend § 11.31 by:

- a. designating the table immediately following paragraph (d)(1) as table 1 to paragraph (d)(1); and
- b. designating the table immediately following paragraph (e) as table 2 to paragraph (e); and
- c. revising table 2 to paragraph (e); and
- d. designating the table immediately following paragraph (f) as table 3 to paragraph (f).

The revision to table 2 to paragraph (e) reads as follows:

**§ 11.31 EAS protocol.**

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(e) \* \* \*

<b>Table 2 to paragraph (e)</b>	
<b>Nature of activation</b>	<b>Event codes</b>
National Codes (Required):	
Emergency Action Notification (National only)	EAN.
National Periodic Test	NPT.
Required Monthly Test	RMT.
Required Weekly Test	RWT.
State and Local Codes (Optional):	
Administrative Message	ADR.

Avalanche Warning	AVW.
Avalanche Watch	AVA.
Blizzard Warning	BZW.
Blue Alert	BLU.
Child Abduction Emergency	CAE.
Civil Danger Warning	CDW.
Civil Emergency Message	CEM.
Coastal Flood Warning	CFW.
Coastal Flood Watch	CFA.
Dust Storm Warning	DSW.
Earthquake Warning	EQW.
Evacuation Immediate	EVI.
Extreme Wind Warning	EWW.
Fire Warning	FRW.
Flash Flood Warning	FFW.
Flash Flood Watch	FFA.
Flash Flood Statement	FFS.
Flood Warning	FLW.
Flood Watch	FLA.
Flood Statement	FLS.

Hazardous Materials Warning	HMW.
High Wind Warning	HWW.
High Wind Watch	HWA.
Hurricane Warning	HUW.
Hurricane Watch	HUA.
Hurricane Statement	HLS.
Law Enforcement Warning	LEW.
Local Area Emergency	LAE.
Missing and Endangered Persons	MEP.
Network Message Notification	NMN.
911 Telephone Outage Emergency	TOE.
Nuclear Power Plant Warning	NUW.
Practice/Demo Warning	DMO.
Radiological Hazard Warning	RHW.
Severe Thunderstorm Warning	SVR.
Severe Thunderstorm Watch	SVA.
Severe Weather Statement	SVS.
Shelter in Place Warning	SPW.
Special Marine Warning	SMW.
Special Weather Statement	SPS.

Storm Surge Watch	SSA.
Storm Surge Warning	SSW.
Tornado Warning	TOR.
Tornado Watch	TOA.
Tropical Storm Warning	TRW.
Tropical Storm Watch	TRA.
Tsunami Warning	TSW.
Tsunami Watch	TSA.
Volcano Warning	VOW.
Winter Storm Warning	WSW.
Winter Storm Watch	WSA.



**APPENDIX B****Initial Regulatory Flexibility Analysis**

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

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

2. The Emergency Alert System (EAS) is a national public warning system used by federal, state, local, territorial, and Tribal authorities to deliver important emergency information to the public in affected communities through radio and television broadcasters, cable systems, wireline video, and other service providers (EAS Participants).<sup>4</sup> EAS Participants are required to deliver Presidential alerts,<sup>5</sup> and may voluntarily deliver alerts issued by federal, state, local, territorial, and Tribal authorities, such as weather-related and AMBER Alerts.<sup>6</sup> The public also depends on Wireless Emergency Alerts (WEA), a system that allows wireless providers who are participating commercial mobile radio service (CMRS) Providers to voluntarily deliver critical warnings and information to the public through their wireless phones. In the *NPRM*, the Commission proposes adding a new EAS event code for Missing and Endangered Persons (“MEP Warning” or “MEP”), that would be used to transmit “Ashanti Alerts” associated with adult persons missing or abducted from states, territories, or Tribal communities to the public over the EAS.

3. The Ashanti Alert Act was enacted to encourage the formation, enhancement, and integration of Ashanti Alert plans throughout the United States, and for other purposes,<sup>7</sup> by “establish[ing] a voluntary nationwide communication network to aid in the search and recovery of missing persons over the age of 17 who fall outside the scope of America’s Missing: Broadcast Emergency Response (AMBER) Alerts and Silver Alerts.”<sup>8</sup> As required by the Ashanti Alert Act, the Department of Justice (DOJ) has designated the Bureau of Justice Assistance (BJA) as the Ashanti Alert Coordinator<sup>9</sup> which, in turn, has developed guidance for “states, Indian Tribes, local governments, law

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

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> See FCC, Emergency Alert System (EAS), <https://www.fcc.gov/consumers/guides/emergency-alert-system-eas>, (last visited Feb. 5, 2024) (“FCC EAS Homepage”).

<sup>5</sup> 47 CFR § 11.1.

<sup>6</sup> 47 CFR § 11.55(a); DOJ, *AMBER Alert – America’s Missing: Broadcast Emergency Response*, <https://amberalert.ojp.gov/> (last visited Feb 5, 2024).

<sup>7</sup> 34 U.S.C. § 21901, *et. seq.*

<sup>8</sup> *Ashanti Alert Notification System Overview. See also Ashanti Alert Fact Sheet.*

<sup>9</sup> 34 U.S.C. § 21903.

enforcement agencies, and other stakeholders seeking to establish or enhance an existing Ashanti Alert Plan” in a manner that will promote compatible and integrated missing and endangered person plans throughout the United States.<sup>10</sup> Ashanti Alert carriage, and use of the MEP event code would be voluntary.<sup>11</sup> EAS Participants who decide to carry missing and endangered person alerts, including Ashanti Alerts, should be able to accommodate the new code with a software upgrade of equipment already in place but not yet capable of handling these codes. Any new equipment allowed under existing rules is either similarly upgradeable or will already be programmed to handle the code. The *NPRM* seeks comment on whether adding a MEP event code to the EAS for missing and endangered person alerts would serve the public interest by furthering the goal of the Ashanti Alert Act to disseminate information to the public that protects law enforcement officials, and the public at large.

## **B. Legal Basis**

4. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615.

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

5. 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>12</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>13</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>14</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 Small Business Administration (SBA).<sup>15</sup>

6. *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, at the outset, three broad groups of small entities that could be directly affected herein.<sup>16</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>17</sup> These types of small

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<sup>10</sup> 34 U.S.C. §§ 21902 and 21903.

<sup>11</sup> See, e.g., 47 CFR § 11.55(a); 47 CFR § 11.52(d)(5). See also *First Report and Order*, 20 FCC Rcd at 18628, para. 8.

<sup>12</sup> 5 U.S.C. § 603(b)(3).

<sup>13</sup> *Id.* § 601(6).

<sup>14</sup> *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.”

<sup>15</sup> 15 U.S.C. § 632

<sup>16</sup> See 5 U.S.C. § 601(3)-(6).

<sup>17</sup> See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.<sup>18</sup>

7. 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.”<sup>19</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>20</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>21</sup>

8. 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.”<sup>22</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>23</sup> indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>24</sup> Of this number, there were 36,931 general purpose governments (county,<sup>25</sup> municipal, and town or township<sup>26</sup>) with populations of

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<sup>18</sup> *Id.*

<sup>19</sup> See 5 U.S.C. § 601(4).

<sup>20</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>21</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-BMF>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawai’i. This data does not include information for Puerto Rico.

<sup>22</sup> See 5 U.S.C. § 601(5).

<sup>23</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>24</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>25</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>26</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

less than 50,000 and 12,040 special purpose governments—independent school districts<sup>27</sup> with enrollment populations of less than 50,000.<sup>28</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>29</sup>

9. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>30</sup> Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>31</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>32</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>33</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>34</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>35</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>36</sup> Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

10. *Broadband Personal Communications Service*. The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.<sup>37</sup> The closest industry with a SBA small business size standard applicable to these services is Wireless

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<sup>27</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>28</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>29</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

<sup>30</sup> See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>31</sup> *Id.*

<sup>32</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>33</sup> See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>34</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>35</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/Id.lic/attachments/DOC-379181A1.pdf>.

<sup>36</sup> *Id.*

<sup>37</sup> See 47 CFR § 24.200.

Telecommunications Carriers (except Satellite).<sup>38</sup> The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>39</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>40</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>41</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

11. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.<sup>42</sup> The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.<sup>43</sup> Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.<sup>44</sup>

12. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

13. *Narrowband Personal Communications Services.* Narrowband Personal Communications Services (*Narrowband PCS*) are PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.<sup>45</sup> PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.<sup>46</sup> Wireless Telecommunications Carriers (*except Satellite*)<sup>47</sup> is the closest industry

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<sup>38</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>39</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>40</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>41</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>42</sup> Based on a FCC Universal Licensing System search on November 16, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>43</sup> See 47 CFR § 24.720(b).

<sup>44</sup> See Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, <https://www.fcc.gov/auctions>.

<sup>45</sup> See 47 CFR § 24.5.

<sup>46</sup> *Id.*

<sup>47</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.



with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>48</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>49</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>50</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

14. According to Commission data as of December 2021, there were approximately 4,211 active *Narrowband PCS* licenses.<sup>51</sup> The Commission's small business size standards with respect to *Narrowband PCS* involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.<sup>52</sup> A "very small business" is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.<sup>53</sup> Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses.<sup>54</sup> One of the winning bidders claiming a small business status classification in these *Narrowband PCS* license auctions had an active license as of December 2021.<sup>55</sup>

15. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

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<sup>48</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>49</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>50</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>51</sup> Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>52</sup> See 47 CFR § 24.321(a)(1)-(2).

<sup>53</sup> *Id.*

<sup>54</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 41: Narrowband PCS, Summary, Closing Charts, License By Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/41/charts/41cls2.pdf>; Auction 50: Narrowband PCS, Summary, Closing Charts, License By Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/50/charts/50cls2.pdf>.

<sup>55</sup> Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.



16. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.<sup>56</sup> Wireless Telecommunications Carriers (*except Satellite*)<sup>57</sup> is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>58</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>59</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>60</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

17. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.<sup>61</sup>

18. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

19. *700 MHz Guard Band Licensees.* The 700 MHz Guard Band encompasses spectrum in 746-747/776-777 MHz and 762-764/792-794 MHz frequency bands. Wireless Telecommunications Carriers (*except Satellite*)<sup>62</sup> is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>63</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>64</sup> Of this number, 2,837

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<sup>56</sup> See 47 CFR §§ 27.1 – 27.1607.

<sup>57</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except Satellite*),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>58</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>59</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

<sup>60</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>61</sup> See 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

<sup>62</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (*except Satellite*),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>63</sup> See 13 CFR § 121.201, NAICS Code 517312.

firms employed fewer than 250 employees.<sup>65</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

20. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.<sup>66</sup> The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>67</sup> Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses.<sup>68</sup> None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.<sup>69</sup>

21. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

22. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting

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<sup>64</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>65</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>66</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>67</sup> See 47 CFR § 27.502(a).

<sup>68</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 33: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/33/charts/33cls2.pdf>, Auction 38: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/38/charts/38cls2.pdf>.

<sup>69</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

services.<sup>70</sup> Wireless Telecommunications Carriers (*except* Satellite)<sup>71</sup> is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>72</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>73</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>74</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.<sup>75</sup> The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>76</sup> In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,<sup>77</sup> twenty-six winning bidders claiming a small business classification won 214 licenses,<sup>78</sup> and three winning bidders claiming a small business classification won all five auctioned licenses.<sup>79</sup>

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<sup>70</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/44/factsheet>, <https://www.fcc.gov/auction/49/factsheet>, <https://www.fcc.gov/auction/60/factsheet>.

<sup>71</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>72</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>73</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>74</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>75</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>76</sup> See 47 CFR § 27.702(a)(1)-(3).

<sup>77</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf>.

<sup>78</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf>.

<sup>79</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, <https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf>.

24. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

25. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.<sup>80</sup> Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.<sup>81</sup> Wireless Telecommunications Carriers (*except Satellite*)<sup>82</sup> is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>83</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>84</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>85</sup> Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

26. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.<sup>86</sup> The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the

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<sup>80</sup> See 47 CFR § 27.4.

<sup>81</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, <https://www.fcc.gov/auction/73/factsheet>. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

<sup>82</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>83</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>84</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>85</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>86</sup> Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

preceding three years.<sup>87</sup> Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.<sup>88</sup>

27. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

28. *Advanced Wireless Services (AWS) - (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3); 2000–2020 MHz and 2180–2200 MHz (AWS-4)).* Spectrum is made available and licensed in these bands for the provision of various wireless communications services.<sup>89</sup> Wireless Telecommunications Carriers (*except Satellite*)<sup>90</sup> is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>91</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>92</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>93</sup> Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

29. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses.<sup>94</sup> The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>95</sup> Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won

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<sup>87</sup> See 47 CFR § 27.502(a).

<sup>88</sup> See *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

<sup>89</sup> See 47 CFR § 27.1(b).

<sup>90</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>91</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>92</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>93</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>94</sup> Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AD, AH, AT, AW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>95</sup> See 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.



215 of 1,087 licenses.<sup>96</sup> In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.<sup>97</sup>

30. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

31. *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,"<sup>98</sup> 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)).<sup>99</sup> Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.<sup>100</sup>

32. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).<sup>101</sup> The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>102</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.<sup>103</sup> Of this number, 2,837 firms employed

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<sup>96</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 66: Advanced Wireless Services (AWS-1), Summary, Spreadsheets, <https://www.fcc.gov/sites/default/files/wireless/auctions/66/charts/66cls2.pdf>.

<sup>97</sup> See *Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, DA-15-131, Attachments A-B, (Auction No. 97) (January 30, 2015).

<sup>98</sup> The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

<sup>99</sup> See 47 CFR § 27.4; see also *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).

<sup>100</sup> Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

<sup>101</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>102</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>103</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

fewer than 250 employees.<sup>104</sup> Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

33. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.<sup>105</sup> The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>106</sup> Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.<sup>107</sup> One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.<sup>108</sup>

34. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years.<sup>109</sup> In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

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<sup>104</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>105</sup> Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>106</sup> See 47 CFR § 27.1218(a).

<sup>107</sup> See Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, <https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls>.

<sup>108</sup> Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>109</sup> See 47 CFR § 27.1219(a).

35. *The Educational Broadcasting Services.* Cable-based educational broadcasting services fall under the broad category of the Wired Telecommunications Carriers industry.<sup>110</sup> The Wired Telecommunications Carriers 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.<sup>111</sup> Transmission facilities may be based on a single technology or a combination of technologies.<sup>112</sup> Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services.<sup>113</sup>

36. The SBA small business size standard for this industry classifies businesses having 1,500 or fewer employees as small.<sup>114</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>115</sup> Of this total, 2,964 firms operated with fewer than 250 employees.<sup>116</sup> Thus, under this size standard, the majority of firms in this industry can be considered small. Additionally, according to Commission data as of December 2021, there were 4,477 active EBS licenses.<sup>117</sup> The Commission estimates that the majority of these licenses are held by non-profit educational institutions and school districts and are likely small entities.

37. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.<sup>118</sup> 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.<sup>119</sup> The SBA small business size standard for this industry classifies businesses

<sup>110</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (CCTV) services; VoIP service providers, using owner operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>115</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePrevious=false>.

<sup>116</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>117</sup> Based on a FCC Universal Licensing System search on December 17, 2021. <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

<sup>118</sup> See U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>119</sup> *Id.*



having 1,250 employees or less as small.<sup>120</sup> U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.<sup>121</sup> Of this number, 624 firms had fewer than 250 employees.<sup>122</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

38. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.<sup>123</sup> Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.<sup>124</sup> These establishments may design, develop, and publish, or publish only.<sup>125</sup> The SBA small business size standard for this industry classifies businesses having annual receipts of \$41.5 million or less as small.<sup>126</sup> U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year.<sup>127</sup> Of this number 7,226 firms had revenue of less than \$25 million.<sup>128</sup> Based on this data, we conclude that a majority of firms in this industry are small.

39. *Noncommercial Educational (NCE) and Public Broadcast Stations.* Noncommercial educational broadcast stations and public broadcast stations are television or radio broadcast stations which under the Commission's rules are eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and are owned and operated by a public agency or nonprofit private foundation, corporation, or association; or are owned and operated by a municipality which transmits only noncommercial programs for education purposes.

40. The SBA small business size standards and U.S. Census Bureau data classify radio stations<sup>129</sup> and television broadcasting<sup>130</sup> separately and both categories may include both noncommercial and commercial stations. The SBA small business size standard for both radio stations and television

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<sup>120</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>121</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

<sup>122</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>123</sup> See U.S. Census Bureau, *2017 NAICS Definition, "511210 Software Publishers,"* <https://www.census.gov/naics/?input=511210&year=2017&details=511210>.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See 13 CFR § 121.201, NAICS Code 511210.

<sup>127</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 511210, <https://data.census.gov/cedsci/table?y=2017&n=511210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>128</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>129</sup> See U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations,"* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

<sup>130</sup> See U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

broadcasting classify firms having \$41.5 million or less in annual receipts as small.<sup>131</sup> For Radio Stations, U.S. Census Bureau data for 2017 show that 1,879 of the 2,963 firms that operated during that year had revenue of less than \$25 million per year.<sup>132</sup> For Television Broadcasting, U.S. Census Bureau data for 2017 show that 657 of the 744 firms that operated for the entire year had revenue of less than \$25,000,000.<sup>133</sup> While the U.S. Census Bureau data does not indicate the number of non-commercial stations, we estimate that under the applicable SBA size standard the majority of noncommercial educational broadcast stations and public broadcast stations are small entities.

41. According to Commission data as of March 31, 2022, there were 4,503 licensed noncommercial educational radio and television stations<sup>134</sup> In addition, the Commission estimates as of March 31, 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,840 LPTV stations and 3,231 TV translator stations.<sup>135</sup> The Commission does not compile and otherwise does not have access to financial information for these stations that permit it to determine how many stations qualify as small entities under the SBA small business size standards. However, given the nature of these services, we will presume that all noncommercial educational and public broadcast stations qualify as small entities under the above SBA small business size standards.

42. *Radio Stations.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”<sup>136</sup> Programming may originate in their own studio, from an affiliated network, or from external sources.<sup>137</sup> The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.<sup>138</sup> U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.<sup>139</sup> Of this number, 1,879

<sup>131</sup> See 13 CFR § 121.201, NAICS Code 515112 (Radio Stations); NAICS Code 515120 (Television Broadcasting).

<sup>132</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated for the entire year. We also note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We further note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>133</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>134</sup> *Broadcast Station Totals as of March 31, 2022*, Public Notice, DA 22-365 (rel. April 5, 2022) (*March 2022 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-march-31-2022>.

<sup>135</sup> *Id.*

<sup>136</sup> See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

<sup>137</sup> *Id.*

<sup>138</sup> See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

<sup>139</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

(continued...)

firms operated with revenue of less than \$25 million per year.<sup>140</sup> Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

43. The Commission estimates that as of December 31, 2023, there were 4,444 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,107 commercial radio stations.<sup>141</sup> Of this total, 11,105 stations (or 99.98 %) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on January 9, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of December 31, 2023, there were 4,286 licensed noncommercial (NCE) FM radio stations, 1,967 low power FM (LPFM) stations, and 8,927 FM translators and boosters.<sup>142</sup> The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

44. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations<sup>143</sup> 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 radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

45. *FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the industry for Radio Stations.<sup>144</sup> The Radio Stations industry comprises establishments primarily engaged in broadcasting aural programs by radio to the public.<sup>145</sup> Programming

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[w=false](#). We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

<sup>140</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>141</sup> *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*January 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf>.

<sup>142</sup> *Id.*

<sup>143</sup> "[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).

<sup>144</sup> See U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations,"* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

<sup>145</sup> *Id.*

may originate in their own studio, from an affiliated network, or from external sources.<sup>146</sup> The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.<sup>147</sup> U.S. Census Bureau data for 2017 show that 2,963 firms operated during that year.<sup>148</sup> Of that number, 1,879 firms operated with revenue of less than \$25 million per year.<sup>149</sup> Therefore, based on the SBA's size standard we conclude that the majority of FM Translator stations and Low Power FM Stations are small. Additionally, according to Commission data, as of December 31, 2023, there were 8,927 FM Translator Stations and 1,967 Low Power FM licensed broadcast stations.<sup>150</sup> The Commission however does not compile and otherwise does not have access to information on the revenue of these stations that would permit it to determine how many of the stations would qualify as small entities. For purposes of this regulatory flexibility analysis, we presume the majority of these stations are small entities.

46. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”<sup>151</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>152</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.<sup>153</sup> 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.<sup>154</sup> Of that number, 657 firms had revenue of less than \$25,000,000.<sup>155</sup> Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

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<sup>146</sup> *Id.*

<sup>147</sup> See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

<sup>148</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

<sup>149</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with annual receipts that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>150</sup> *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*January 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf>.

<sup>151</sup> See U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting,”* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

<sup>152</sup> *Id.*

<sup>153</sup> See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

<sup>154</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>155</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

47. As of December 31, 2023, there were 1,380 licensed commercial television stations.<sup>156</sup> Of this total, 1,261 stations (or 91.4%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 9, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of September 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,878 LPTV stations and 3,121 TV translator stations.<sup>157</sup> The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

48. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.<sup>158</sup> The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.<sup>159</sup> The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>160</sup> The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.<sup>161</sup> Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.<sup>162</sup> Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.<sup>163</sup> Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

49. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>164</sup> Based on industry

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<sup>156</sup> *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*January 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf>.

<sup>157</sup> *Id.*

<sup>158</sup> See U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> See 13 CFR § 121.201, NAICS Code 515210.

<sup>162</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

<sup>163</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>164</sup> 47 CFR § 76.901(d).



data, there are about 420 cable companies in the U.S.<sup>165</sup> Of these, only seven have more than 400,000 subscribers.<sup>166</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>167</sup> Based on industry data, there are about 4,139 cable systems (headends) in the U.S.<sup>168</sup> Of these, about 639 have more than 15,000 subscribers.<sup>169</sup> Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

50. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a “small cable operator,” 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.”<sup>170</sup> For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.<sup>171</sup> Based on industry data, only six cable system operators have more than 498,000 subscribers.<sup>172</sup> Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>173</sup> Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

51. *Satellite Telecommunications*. This industry 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.”<sup>174</sup> Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.<sup>175</sup> U.S. Census Bureau data for 2017 show that 275

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<sup>165</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>166</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

<sup>167</sup> 47 CFR § 76.901(c).

<sup>168</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>169</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>170</sup> 47 U.S.C. § 543(m)(2).

<sup>171</sup> *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 Subscriber Threshold PN). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice.. See 47 CFR § 76.901(e)(1).

<sup>172</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

<sup>173</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission’s rules. See 47 CFR § 76.910(b).

<sup>174</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications,”* <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

<sup>175</sup> See 13 CFR § 121.201, NAICS Code 517410.

firms in this industry operated for the entire year.<sup>176</sup> Of this number, 242 firms had revenue of less than \$25 million.<sup>177</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.<sup>178</sup> Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.<sup>179</sup> Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

52. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>180</sup> 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.<sup>181</sup> Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.<sup>182</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>183</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>184</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>185</sup> Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

53. *Direct Broadcast Satellite ("DBS") Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and

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<sup>176</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>177</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>178</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26*, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>179</sup> *Id.*

<sup>180</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>184</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>185</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).



video using wired telecommunications networks.<sup>186</sup> Transmission facilities may be based on a single technology or combination of technologies.<sup>187</sup> Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services.<sup>188</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>189</sup>

54. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>190</sup> U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.<sup>191</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>192</sup> Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.<sup>193</sup> DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

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

55. The *NPRM* initiates a proceeding to revise the Commission's EAS rules to adopt a new EAS event code, MEP, which may require new reporting, recordkeeping, and other compliance obligations for small and other EAS Participants that voluntarily deliver emergency alerts issued by federal, state, local, territorial, and Tribal authorities. Specifically, the *NPRM* proposes that EAS participants limit alerts to include only the appropriate information relating to the special needs of the missing adult, and shared in geographic areas where the missing adult could reasonably reach. The *NPRM* also seeks comment on how the term "reasonable" may be construed in this context between small and large EAS participants. The *NPRM* proposes that EAS participants be allowed to upgrade equipment on a voluntary basis through new equipment programmed to contain the code or through a software upgrade to install the code into existing equipment, which may allow flexibility for small entities to comply. Under the proposed rules, EAS equipment manufacturers would need to update their equipment to integrate the MEP event code for Ashanti Alerts in new equipment and through software upgrades

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<sup>186</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>187</sup> *Id.*

<sup>188</sup> See *id.* Included in this industry are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

<sup>189</sup> *Id.*

<sup>190</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>191</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>192</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>193</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

within twelve months of the effective date of the rules. While event codes such as MEP are not required under the Commission's rules for wireless providers that provide WEA, the *NPRM* seeks comment on whether adoption of a dedicated EAS code for Ashanti Alerts would have any effect on WEA, or whether guidance on classification of Ashanti Alerts would be helpful for small and other CMRS providers and WEA stakeholders.

56. We estimate that broadcast and cable providers may need one hour to download and install a software update specific to the MEP event code. EAS Participants are currently required to have equipment that would be capable of being upgraded by software to accommodate EAS modifications such as those proposed in the *NPRM*, and we see no reason why the a new event code could not be bundled with minimally burdensome, low-cost software upgrades that small and other EAS Participants would otherwise install during the regular course of business. As such, this should diminish the burden on small entities to comply with the proposed rules. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs for hiring professional staff , if necessary, and other burdens that may result from the proposals and inquiries we make in the *NPRM*.

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

57. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities 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 such 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 such small entities.”<sup>194</sup>

58. The rule changes contemplated by the *NPRM* would adopt “MEP” as a new EAS event code for Ashanti Alerts, and require implementation by small and other participating EAS Participants and CMRS Providers on a voluntary basis through equipment already in place (or a software upgrade thereof). Among the alternatives presented in the *NPRM* is whether there are existing EAS event codes that could effectively transmit Ashanti Alerts. The costs to EAS Participants associated with implementing the codes contained in the proposed rule changes are expected to be *de minimis* since the Commission anticipates compliance costs would be limited to the cost of labor for downloading software updates, to the extent any updates are required at all. Nevertheless, we have invited comment on the costs associated with implementation of the proposed Ashanti Alert code in order to more fully understand the impact of the proposed action and assess whether any action is needed to assist small entities. Similarly, while the Commission believes that the costs incurred by equipment manufacturers to write a few lines of code to implement the Ashanti Alert code will be minimal, we have invited comments on the cost to EAS equipment manufacturers of creating software updates, testing these updates, supplying them to their customers, and providing any related customer support. Additionally, we have invited commenters to propose steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose other alternatives that serve the goals of the Commission's proposals while minimizing impacts to small entities.

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

59. None.

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<sup>194</sup> 5 U.S.C. § 603(c)(1)-(4).

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Wireless Emergency Alerts*, PS Docket No. 15-91; *Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94; Notice of Proposed Rulemaking (March 14, 2024)

At the Oscar ceremony this week, *Killers of the Flower Moon* was shut out of the awards. But this film accomplished something that I think is more important than racking up wins in Hollywood. It opened our eyes to the troubling fact that violence against Native women has a long history. It affects us to this day. The cruel reality is that we continue to have a crisis of missing and murdered indigenous people, and it is especially acute for women and girls in Tribal communities.

The Bureau of Indian Affairs estimates there are more than four thousand cases of missing and murdered American Indian and Alaska Natives that are unsolved. According to the Federal Bureau of Investigation, the numbers missing are more than two and half times their share of the United States population. While there are new methods to collect data on missing and endangered Tribal and Native people, the true magnitude of this problem is hard to capture through data alone.

This movie gave voice to this crisis. Congress did too, when in 2017 it established May 5 as the National Day of Awareness for Missing and Murdered Native Women and Girls. Then in 2018, Congress passed the Ashanti Alert Act, which directs the Department of Justice to work more closely with state and local law enforcement agencies to help find missing and endangered adults.

These efforts are vital. But I believe more work is needed to help address the crisis of missing and murdered indigenous people—and today the Federal Communications Commission is stepping up to do just that.

It was nearly three decades ago that AMBER Alerts were created. They tell us on television and on mobile phones when a child goes missing. So many young people have been safely found with these alerts. They demonstrate that there is a way to raise awareness when someone goes missing and increase the odds that we safely find them.

So today we propose a new code in our emergency alert systems for broadcasting and wireless that would sound the alarm when adults are missing and endangered, to help raise awareness and support recovery. This is critical, especially for the indigenous women and girls who are at special risk.

I want to thank the National Congress of American Indians for their work to pass a resolution to support the Commission establishing this new code. I want to acknowledge the efforts of members of Congress who have brought attention to this issue, including Senators Luján, Schatz, Daines, Tester, Murkowski, and Cortez Masto. Our work also owes a debt of gratitude to Native Public Media for bringing this issue to our attention. So a big thank you to Loris Taylor of Native Public Media who so said in letter to us “that by working collaboratively, we can make meaningful strides in addressing the challenges posed by the Missing and Murdered Indigenous Persons crises and enhance the safety and well-being of Indigenous peoples, and American people in general.” I agree. Our work here may not have the glamour of the Oscar ceremony, but it is absolutely essential because it can help save lives.

Finally, I want to acknowledge the staff responsible for this rulemaking including Alejandro Roark, Mark Stone, Aaron Garza, Wesley Platt, Dana Bowers, Theo Marcus, Bambi Kraus, and Cara Voth from the Consumer and Governmental Affairs Bureau; Nicole McGinnis, Austin Randazzo, James Wiley, George Donato, Drew Morin, David Kirschner, and David Munson from the Public Safety and Homeland Security Bureau; Joy Ragsdale, Joycelyn James, Jamie Saloom, and Chana Wilkerson from the Office of Communications Business Opportunities; and Doug Klein, William Huber, Anjali Singh, and Erika Olsen from the Office of General Counsel.

**STATEMENT OF  
COMMISSIONER ANNA M. GOMEZ**

Re: *Wireless Emergency Alerts*, PS Docket No. 15-91; *Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94; Notice of Proposed Rulemaking (March 14, 2024)

This Notice of Proposed Rulemaking includes a remarkable statistic from the Department of Justice that is worthwhile repeating – of the 181 AMBER alerts issued in 2022, 180 resulted in the recovery of a child. That is an amazing and encouraging statistic about the effectiveness of emergency alerts.

Today, we begin the process to establish a new emergency alert code dedicated to help find adults that have gone missing. The public policy goal of this proposed rulemaking is to help communities and families that unfortunately experience the anguish of not knowing where their loved ones are.

This notice also represents our small but powerful contribution to address the crisis of Missing and Murdered Indigenous Persons, which has afflicted Native communities for far too long. Native Americans constitute 2.5% of all missing person cases despite comprising only 1.2% of the U.S. population. With this proposal to establish a new emergency alert code for missing persons we hope to offer help.

As I said, via video remarks, at the annual 2024 Reservation Economic Summit held in Las Vegas, Nevada – we want to hear from the public, public safety authorities and emergency response officials. How does this proposal help?

A heartfelt thank you to the staff of the Consumer and Governmental Affairs Bureau for your work on this critical life-saving item. I approve this item.