

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

In the Matter of)
)
Reporting Requirements for Commercial) MB Docket No. 23-427
Television Broadcast Station Blackouts)
)

REPORT AND ORDER

Adopted: December 31, 2024 Released: January 3, 2025

By the Commission:

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I. INTRODUCTION

1. In this *Report and Order (Order)*, we require the reporting of broadcast station blackouts lasting over 24 hours that occur on cable and satellite TV platforms due to a retransmission consent negotiation impasse. The light-touch reporting framework we adopt today requires public reporting of the beginning and resolution of any qualifying blackout and confidential submission of information about the number of subscribers affected. This reporting will fill a basic information gap in the Commission’s awareness of such blackouts, ensuring that the Commission receives prompt and accurate information about critical multichannel video programming distributor (MVPD) service disruptions involving broadcast stations when they occur. In addition, the creation of a centralized, Commission-hosted database of basic blackout information will increase transparency around the frequency and duration of broadcast station blackouts for the public.

II. BACKGROUND

2. The Communications Act of 1934, as amended (the Act), requires that cable operators, satellite TV providers, and other MVPDs obtain a broadcast TV station’s consent to lawfully retransmit the signal of a broadcast station to subscribers.¹ Congress first required the Commission to adopt retransmission consent regulations in the Cable Television Consumer Protection and Competition Act of

¹ 47 U.S.C. § 325.

1992,² the overall purpose of which is, among other things, to “promote the availability to the public of a diversity of views and information through cable television and other video distribution media” and “rely on the marketplace, to the maximum extent feasible” to achieve this goal.³ Congress directed the Commission to consider how the grant of retransmission consent may affect cable rates.⁴

3. Commercial stations may either give consent by demanding carriage (must carry) or seek to negotiate in exchange for carriage (retransmission consent), and may switch between these choices every three years.⁵ If a former “must carry” station elects retransmission consent but is unable to reach agreement for carriage, or the parties to an existing retransmission consent agreement do not extend, renew, or revise that agreement prior to its expiration, the MVPD loses the right to carry the signal. The result is a “blackout” of that existing broadcast programming on the MVPD platform.⁶ When these broadcast station blackouts occur, the MVPD’s subscribers typically lose access, through their MVPD service, to the station’s entire signal, including both the national and local programming provided by the broadcaster.⁷ Thus, if the blacked-out broadcast station was owned by or affiliated with a national broadcast network, subscribers would be unable to access, through their MVPD service, that broadcaster’s network programming as well as the local news, traffic, weather, emergency information, and public affairs programming provided by their local station.

4. While the Commission cannot prohibit a blackout from occurring, it can enforce broadcasters’ and MVPDs’ statutory duties around negotiation. Section 325 of the Cable Television Consumer Protection and Competition Act prohibits broadcast television stations and MVPDs from “failing to negotiate [retransmission consent] in good faith.”⁸ The Commission’s rules provide a framework for determining whether a party’s conduct in negotiations constitutes a failure to negotiate in good faith.⁹ In implementing these good faith rules, the Commission focused on the negotiation process rather than the details of the negotiations themselves, as “Congress intended that the Commission develop and enforce a process that ensures that broadcasters and MVPDs meet to negotiate retransmission consent and that such negotiations are conducted in an atmosphere of honesty, purpose, and clarity of process.”¹⁰

² Pub. L. No. 102-385 § 6 (1992), *codified at* 47 U.S.C. § 325(b).

³ *Id.* § 2(b).

⁴ 47 U.S.C. § 325(b)(3)(A).

⁵ 47 U.S.C. § 325(b)(3)(B).

⁶ Federal Communications Commission, *Retransmission Consent*, <https://www.fcc.gov/media/policy/retransmission-consent> (last updated Sept. 27, 2021).

⁷ Although some MVPD subscribers may be able to view the blacked out local broadcast signals using over-the-air antennas or other equipment, not everyone lives in locations that can receive over-the-air signals. Further, not everyone has the equipment necessary to do so. FCC, *DTV Reception Maps*, <https://www.fcc.gov/media/engineering/dtvmaps> (last visited Aug. 28, 2024) (showing over-the-air signal availability and noting that “[a]ctual signal strength may vary based on a variety of factors, including, but not limited to, building construction, neighboring buildings and trees, weather, and specific reception hardware,” and that “signal strength may be significantly lower in extremely hilly areas”).

⁸ 47 U.S.C. § 325(b)(3)(C). In 1999, Congress enacted the Satellite Home Viewer Improvement Act (SHVIA), which required television stations to negotiate retransmission consent with MVPDs in good faith and included the “competitive marketplace considerations” provision. Pub. L. No. 106-113, 113 Stat. 1501 (1999). Although SHVIA imposed the good faith negotiation obligation only on broadcasters, in 2004 Congress made the good faith negotiation obligation reciprocal between broadcasters and MVPDs. Pub. L. No. 108-447, 118 Stat. 2809 (2004) (referred to as the Satellite Home Viewer Extension and Reauthorization Act (SHVERA)).

⁹ 47 CFR § 76.65(b).

¹⁰ *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, CS Docket No. 99-363, First Report and Order, 15 FCC Rcd 5445, 5455, para. 24 (continued....)

If a broadcast station or MVPD believes the other party has not acted in good faith, it may file a good faith complaint with the Commission either before or after a carriage agreement is signed.¹¹

5. Despite the Commission's good faith rules and complaint process, our experience suggests that cable and satellite TV subscribers are increasingly experiencing blackouts of broadcast station channels on their video service while at the same time retransmission consent fees have been consistently rising.¹² Accordingly, last December we proposed to establish a public database to track these disruptions.¹³

6. Currently, neither broadcast stations nor MVPDs are under any obligation to report broadcast station blackouts occurring on MVPD platforms. As a result, neither the Commission nor consumers have a systematic method for learning of significant MVPD service disruptions involving broadcast programming.¹⁴ When a party to a retransmission consent negotiation files a complaint with the Commission alleging a violation of the Commission's good faith negotiation rules, the Commission is informed of the impasse and any resulting blackout through the complaint process. Many broadcast station blackouts on MVPD platforms, however, occur without either party filing a complaint with the Commission. In fact, since the adoption of the good faith negotiation rules in 2000, there have been relatively few complaints alleging violations of the Commission's good faith negotiation rules despite an increase in the number of subscribers affected by blackouts.¹⁵ As a result, the Commission does not

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(2000) (*Good Faith Order*).

¹¹ 47 CFR §§ 76.65(c), 76.65(e).

¹² *Communications Marketplace Report*, GN Docket No. 22-203, 2022 Communications Marketplace Report, 37 FCC Rcd 15514, 15653 & 15689, paras. 215, 294 (2022) (*2022 Communications Marketplace Report*) (observing that "retransmission consent revenue has grown substantially as the fees negotiated between broadcast stations and MVPDs have increased," and citing data showing that annual retransmission consent fees paid per subscriber increased, on average, by 20.3 percent from 2020 to 2021, while average monthly retransmission consent fees per subscriber per broadcast station increased by 17.7 percent over the same period); *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266, Report on Cable Industry Prices, 33 FCC Rcd 1268, 1288, para. 44 (2018) (concluding that annual retransmission consent fees paid by cable systems to television broadcasters increased by about one-third from 2014 to 2015 on average; average annual retransmission consent fees paid by cable systems to television broadcast stations calculated on a per-subscriber basis increased by about one-third over the same period; and during the 2013-2015 period, the average annual increase in retransmission consent fees was 47.8 percent and the average annual increase in fees per subscriber was 41.8 percent).

¹³ *Reporting Requirements for Commercial Television Broadcast Station Blackouts*, MB Docket No. 23-427, FCC 23-115, Notice of Proposed Rulemaking, 2023 WL 8889607 (Dec. 21, 2023) (*NPRM*).

¹⁴ While our rules require that cable operators notify subscribers when specific broadcast station channels are blacked out, 47 CFR § 76.1603(b), we are not aware of any systematic method used by MVPDs or broadcasters to notify the general public of broadcast station blackouts.

¹⁵ The *Deerfield* good faith complaint "is only the second good faith complaint that was not withdrawn, dismissed, or denied since the rules were established and the first one that the Commission has had the opportunity to consider." *DirecTV, LLC; AT&T Services, Inc., v. Deerfield Media, Inc. et al.*, MB Docket No. 19-168, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695, 10699, para. 8 (2020). While there has been an uptick in good faith complaints filed since *Deerfield*, the number of such complaints resulting in a decision by the Media Bureau or the Commission remains low. See *Hawaiian Telcom Services Company, Inc., v. Nexstar Media Inc.*, MB Docket No. 23-228, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2024 WL 519155 (MB 2024); *Comcast Cable Communications, LLC, v. Mission Broadcasting, Inc.*, MB Docket No. 22-443, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2024 WL 194087 (MB 2024); *Howard Stirk Holdings, LLC*, MB Docket No. 19-168, Order, 35 FCC Rcd 4517 (2020).

usually learn of broadcast station blackouts from good faith complaints, but rather through news reports in the media or informal communication with Commission staff. This ad hoc process does not always provide timely or specific information regarding service disruptions.

7. In response to the *NPRM*, the Commission received comments from both the broadcast and cable industries. While most cable-affiliated commenters support the blackout reporting rule,¹⁶ most broadcast-affiliated commenters and a trade association representing small cable operators (NTCA—The Rural Broadband Association) argue that blackout reporting is unnecessary and beyond the scope of the Commission’s authority, yet make suggestions to improve the proposal, should it be adopted.¹⁷

III. DISCUSSION

8. In this *Order*, we establish a reporting framework for broadcast station blackouts occurring on MVPD platforms. We adopt the proposal in the *NPRM*, with some modifications based on the record developed in this proceeding, to require that the Commission be notified when there is a blackout of broadcast station programming on an MVPD platform as a result of a retransmission consent negotiation impasse lasting over 24 hours. We require MVPDs to notify the Commission when a qualifying blackout occurs, where it happened, and when it has ended. We also require MVPDs to confidentially report to the Commission how many subscribers are experiencing a service disruption as a result of the blackout. In addition, broadcasters may voluntarily supplement MVPD notices if they believe the notices contain inaccurate or incomplete information. The reporting will enable the Commission to be more timely and accurately informed about MVPD service disruptions caused by breakdowns in the retransmission consent negotiation process. In addition, the reporting will also allow the Commission to gather basic information about such blackouts in a database to use going forward to help inform the Commission and the public about the frequency and duration of such blackouts. The blackout reporting requirements we adopt today will better enable the Commission to perform its duties and will foster greater public transparency around blackouts caused by failed retransmission consent negotiations.

9. Below we set forth the framework for blackout reporting. We review the need for blackout reporting, discuss the legal authority we rely upon to implement the reporting, and detail the reporting requirements.

A. Need for the Rule

10. Blackouts are the unfortunate result of failed retransmission consent negotiations. We conclude that a reporting requirement is necessary to provide information that will enable the Commission to assess the functioning of the retransmission consent process, including the effects of blackouts on competition and consumers, and inform Congress. At the outset, we note that the incidence of and number of subscribers affected by retransmission-consent-related blackouts appear to be increasing. As discussed in the *NPRM*, over the past decade and a half, anecdotal data suggests that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically, and the impact of each individual blackout has increased as more stations are taken off the air for longer periods of time.¹⁸ Even in recent years, as broadcast station group mergers and COVID-19-

¹⁶ Comments of the American Television Alliance at 1-2 (ATVA Comments); Comments of NCTA—The Internet & Television Association at 1-2; Reply Comments of NCTA—The Internet & Television Association at 3 (NCTA Reply Comments); One Ministries Inc. Comments on Blackout Reporting at 1 (OMI Comments); Comments of Skitter, Inc. at 3, 7 (Skitter Comments).

¹⁷ Comments of the National Association of Broadcasters at 1-7 (NAB Comments); Reply Comments of the National Association of Broadcasters at 1 (NAB Reply Comments); Joint Reply Comments of the Four Affiliates Associations at 1-9 (Affiliates Associations Reply Comments); Comments of NTCA—The Rural Broadband Association at 1-3 (NTCA Comments).

¹⁸ *NPRM*, 2023 WL 8889607 at *2, para 3.

related delays have led to fewer retransmission consent agreements coming up for renewal in any given year, “the impact on subscribers has remained high.”¹⁹ S&P Capital IQ reports that “[retransmission consent] agreements impact more video subscribers than ever before, making blackouts a tough pill to swallow for those involved,” and that “[s]ports like NFL football are usually major contention points in negotiations, and many retrans deals are struck before NFL game days or even [before the Super Bowl].”²⁰ For example, in 2023, the dispute between Nexstar and DirecTV resulted in a blackout for millions of DirecTV subscribers of “more than 170 local stations across 120 metropolitan areas such as L.A., Chicago, Philadelphia, San Francisco and Denver.”²¹ DirecTV subscribers in markets with Nexstar-owned broadcast stations (which includes stations airing ABC, CBS, Fox, NBC, and CW network programming) lost access to those stations’ local and national broadcast programming for 76 days.²² The blackout ended “when the two sides agreed to terms just two weeks after the NFL season had begun.”²³

11. There are disputes in the record about the whether or not blackouts are in fact increasing. ATVA agrees that broadcast station blackouts “have increased dramatically in recent years[,]” noting that it has been informally tracking such blackouts since 2010 and maintains its own record of blackouts on its website.²⁴ Skitter Inc., a small cable operator providing cable service in primarily rural communities, notes that blackouts are particularly a concern for small MVPDs and their customers, who are usually in rural areas and unable to receive over-the-air broadcast signals.²⁵ NAB submits that blackouts are “rare” and disputes that blackouts have been increasing in either number or duration over the years.²⁶ NAB contests the *NPRM*’s contention that available blackout data shows an increase in blackouts over the last 20 years.²⁷ It argues that, in any case, the relevant period of comparison should be the last decade, rather

¹⁹ Peter Leitzinger, *Retrans Recap 2023: Fewer Agreements but Subscriber Impact Remains High*, Broadcast Investor, S&P Capital IQ Pro (Apr. 1, 2024), available at <https://perma.cc/RZ9D-L8JN> (“We expected the number of retrans agreements announced to be lower in 2023 as many agreements were delayed in 2021 due to the effects of the COVID-19 pandemic. . . . Consolidation has led to fewer agreements of this type, but the impact on subscribers has remained high—a trend we think is likely to continue.”).

²⁰ *Id.*

²¹ Caitlin Huston, *DirecTV and Nexstar Reach Multiyear Agreement Ending More Than 75 Day Blackout*, Hollywood Reporter (Sept. 18, 2023), <https://www.hollywoodreporter.com/business/business-news/directv-nexstar-1235592744/>; Dade Hayes, *DirecTV and Nexstar Set Multi-Year Carriage Renewal, Ending Impasse That Had Deprived Millions of Viewers of Key Channels Since July—Update*, Deadline (Sept. 18, 2023), <https://deadline.com/2023/09/directv-nexstar-restore-stations-nfl-football-carriage-deal-1235548791/>.

²² Meg James, *Nexstar TV Stations Blackout on DirecTV Ends After 76 Days*, Los Angeles Times (Sept. 18, 2023), <https://www.latimes.com/entertainment-arts/business/story/2023-09-17/directv-nexstar-tv-stations-blackout-ends>; Peter Leitzinger, *Retrans Recap 2023: Fewer Agreements but Subscriber Impact Remains High*, Broadcast Investor, S&P Capital IQ Pro (Apr. 1, 2024).

²³ Peter Leitzinger, *Retrans Recap 2023: Fewer Agreements but Subscriber Impact Remains High*, Broadcast Investor, S&P Capital IQ Pro (Apr. 1, 2024), available at <https://perma.cc/RZ9D-L8JN>. See also Antonio Pequeño IV, *Disney And DirecTV Strike Deal: College Football Returns After Two-Week Blackout*, Forbes (Sept. 14, 2024) (reporting that DirecTV’s 11.3 million customers recently experienced a two week blackout after the company and Disney failed to come to a distribution agreement, “cutting off their access to ESPN, ABC, FX and Disney Channel broadcasts that included college football and ‘Monday Night Football’ among several other programs”).

²⁴ ATVA Comments at 1-2 (quotes omitted); *A Dark Record: Big Broadcast Blackouts 2010-2024*, American Television Alliance, <https://americantelevisionalliance.org/blackouts-in-your-area/> (last visited Sept. 3, 2024) (“It’s going down everywhere. Broadcaster blackouts are happening across the nation.”).

²⁵ Skitter Comments at 4.

²⁶ NAB Reply Comments at 4-5.

²⁷ *Id.* at 4-5 (citing to “NAB Analysis of SNL Kagan Retransmission Databases (2023)”).

than the last 20 years.²⁸ NAB alleges that, instead of there being any meaningful increase in blackouts over time, the times blackouts have spiked correlate to when the FCC or Congress was contemplating changes to the retransmission consent regime.²⁹ Therefore, NAB claims, because blackouts are not increasing, there is no issue with blackouts that needs to be reported to or monitored by the Commission.³⁰

12. Despite NAB's assurances, the impact of blackouts on consumers remains substantial. While there appears to be a recent decrease in the number of deal impasses publicly reported each year, the number of broadcast stations and markets involved continues to be high, totaling 351 blacked out stations across 270 markets for 2023, according to the same Kagan data cited by NAB.³¹ Moreover, in contrast to NAB's assertions, other data in the record suggests that over the past decade and a half blackouts have become more frequent and longer in duration while affecting more subscribers than ever before.³² Even when looking only at more recent blackout data, as NAB suggests, the number of subscribers impacted per disruption has increased dramatically since 2019.³³ This stark increase in the number of subscribers and markets impacted by a single negotiation impasse belies NAB's claim that blackouts are no longer an issue because they are decreasing in number. Indeed, the fact that there are fewer blackouts that are impacting more subscribers means that each blackout is more impactful, and therefore even more important to monitor. In addition, NAB argues that the Commission will not learn any new information from requiring blackout reporting because blackout data is available from other sources, such as SNL Kagan estimates, yet contradictorily also argues that our data from SNL Kagan is "erroneous."³⁴ The fact that NAB disputes the data to which the Commission and other subscribers do have access further supports our reasons for adopting blackout reporting requirements, so that we can maintain an official tally and objective record of basic blackout information to ensure all interested parties are working from the same baseline information.

13. In addition to the consumer impact, we are concerned about the impact of blackouts on competition. Several commenters expressed frustration at the state of the retransmission consent market today.³⁵ NTCA notes that "small MVPDs are struggling to stay in the market, largely due to increasing retransmission consent costs," and that "[t]his is particularly troubling for the rural consumers served by NTCA's members considering that most NTCA members serve many customers who do not have access to an over the air broadcast signal."³⁶ In addition, some commenters contend that the rise in broadcast station blackouts occurring on MVPD platforms correlates to the rise of retransmission consent fees.³⁷ NCTA argues that "[r]etransmission consent impasses are often the result of ever-larger broadcast station

²⁸ *Id.* at 5 & n.10.

²⁹ *Id.* at 5-6.

³⁰ *Id.* at 7.

³¹ Peter Leitzinger, *Retrans Recap 2023: Fewer Agreements but Subscriber Impact Remains High*, Broadcast Investor, S&P Capital IQ Pro (Apr. 1, 2024), available at <https://perma.cc/N95G-EGWD> (reporting "2023 publicized broadcast signal disruptions" data in Excel format accessible via link to "retrans agreement and signal disruptions databases" embedded in article).

³² See *supra* para. 10.

³³ Peter Leitzinger, *Retrans Recap 2023: Fewer Agreements but Subscriber Impact Remains High*, Broadcast Investor, S&P Capital IQ Pro (Apr. 1, 2024), available at <https://perma.cc/RZ9D-L8JN>.

³⁴ NAB Reply Comments at 4-5, 7.

³⁵ ATVA Comments at 1-2; NCTA Comments at 1-2; NCTA Reply Comments at 1-2; NTCA Comments at 1-3; Skitter Comments at 1-7.

³⁶ NTCA Comments at 2.

³⁷ Skitter Comments at 3-5; NTCA Comments at 2-3; ATVA Comments at 1-2; NCTA Comments at 1-2.

groups increasingly demanding unreasonable rates and other terms that are untenable in the current video marketplace.”³⁸ It adds that “cable operators must balance the desire to avoid blackouts with the marketplace imperative to minimize potential rate increases,” and that “cord-cutting can result both from blackouts and increasing content costs that put upward pressure on rates.”³⁹

14. We find that our current patchwork methods for learning of retransmission-consent related blackouts do not sufficiently keep the Commission apprised of critical MVPD service disruptions occurring in the market. Currently, there is no official, public source that aggregates and reports information on such blackouts. As a result, the Commission and the public do not always have access to this important information through a consistent, reliable, and systematic means. To close this information gap, we conclude that obtaining blackout information from MVPDs would be the most effective method for the Commission to gain timely and reliable information about broadcast station blackouts occurring across the country and allow us to better assess the functioning of the retransmission consent process consistent with our statutory obligations. Blackout reports will also provide data that, when combined with other information, can inform empirical analysis of competition and consumer access to programming. In addition, the reporting will enable the Commission to provide better information on the state of the video programming markets as part of the statutorily required Communications Marketplace Report and thus will facilitate a more informed assessment of marketplace developments.⁴⁰

15. *Lack of Available Alternatives.* We disagree with commenters who argue there is no benefit to blackout reporting because information about blackouts is available elsewhere. NAB comments that blackout reporting as proposed “would only provide redundant information already readily available via other means.”⁴¹ NTCA notes that the reporting would “offer[] no information that could not be gained by turning on a station that is blacked out or with a quick internet search.”⁴² Further, NTCA argues that “[t]he Commission already has statistics about blackouts—including how often they occur, how long they last, and the parties involved,” citing to the *NPRM*’s use of SNL Kagan data from Capital IQ Pro, and that it would be more useful to collect data about why blackouts occur.⁴³

16. Basic information on broadcast station blackouts, however, is not often accurately, regularly, or reliably available elsewhere. Relying on news reports and courtesy calls to agency staff—as the Commission has done thus far—is not a consistent or sustainable method for the Commission to keep apprised of critical service disruptions occurring due to breakdowns in the retransmission consent negotiation process. Similarly, while data aggregated from industry analyst sources provide helpful historical metrics, it is not a substitute for timely and reliable access to accurate information on blackouts when they occur. While SNL Kagan data from S&P Capital IQ Pro’s retransmission database is a helpful resource for paying subscribers, it provides limited visibility into the retransmission consent marketplace on an ongoing basis. The database is typically published only in yearly intervals, excludes independent and Class A TV stations, and lists only publicized blackouts. Therefore, data collected by S&P is not a suitable substitute for complete or timely information on service disruptions.

17. No existing source of information serves the two purposes we aim to fulfill: for the Commission and public to receive timely and transparent information as blackouts are occurring, and to create an accurate, robust historical database that can reveal trends and commonalities and inform analysis of the effects of blackouts on competition and consumers. The Commission is in a unique

³⁸ NCTA Comments at 2.

³⁹ NCTA Reply Comments at 2.

⁴⁰ 47 U.S.C. § 163.

⁴¹ NAB Reply Comments at 6.

⁴² NTCA Comments at 3.

⁴³ *Id.* at 3-4.

position to collect this information and host an official database. Moreover, the Commission will be better able to ensure the quality of information reported via the blackout notices because responding entities will be required to provide specific fields of information that are uniform across reporting entities, and the Commission can make individual inquiries with reporting entities as necessary to seek clarification or complete responses. Thus, even though the information collected will not include information about “the root causes of the disruption,” as NTCA suggests, we find that the information we do collect will fill an important information gap for the Commission and the public, particularly given the anecdotal evidence in the record suggesting that blackouts are having an adverse impact on consumers and competition.⁴⁴

18. *Scope of Reporting Requirement.* We disagree with commenters arguing that the reporting requirements would offer no public benefit because the database would be under-inclusive.⁴⁵ NTCA argues that the reporting would “fail to collect sufficient information to be of value to the Commission or the public as to the root causes of the disruption.”⁴⁶ NAB and the Affiliates Associations question whether consumers would use the Commission’s database, but even if they did, “the information they would find there would be incomplete and misleading” because it would only contain information about retransmission consent-related blackouts on MVPD platforms.⁴⁷ They note that blackouts of cable network programming and blackouts on virtual MVPD (vMVPD)⁴⁸ platforms would not be included in the blackout database, and as a result consumers will be misled and misinformed by the limited data set and it therefore might “give a consumer a false impression of [MVPD service] reliability.”⁴⁹ Further, NAB asserts that a database focused just on retransmission consent negotiation impasses “could easily increase confusion among consumers and others, including policymakers, about how often disruptions in

⁴⁴ *Id.* at 1.

⁴⁵ *Id.*; NAB Comments at 6-8; NAB Reply Comments at 6-7; Affiliates Associations Reply Comments at 7-9.

⁴⁶ NTCA Comments at 1.

⁴⁷ Affiliates Associations Comments at 7. In addition NAB argues that “the Commission has not demonstrated, asserted, or even sought comment on whether the public lacks information about access to broadcast signals via their own MVPD services, much less that they would seek information on disruptions in broadcast signal carriage from an FCC database.” NAB Reply Comments at 6. As we noted in the *NPRM*, even though cable subscribers receive notice from their cable operator when an individual broadcast station blackout affects their own channel lineup and video service, on a broader scale, consumers generally do not have access to a consolidated source of information about broadcast station blackouts occurring in aggregate. For example, if a consumer is dissatisfied with their MVPD and wishes to subscribe to a competitor, the consumer may be unable to compare the two providers with respect to blackout history, even though the consumer may know of blackouts they experienced with the incumbent, because there is no official information available regarding blackouts experienced by all MVPDs. In addition, there will be no reporting burden placed on broadcasters, as they are not required to report qualifying broadcast station blackouts.

⁴⁸ As the Commission explained in the *2022 Communications Marketplace Report*, vMVPDs are a specific type of online video distributor that deliver packages of streaming linear channels via the Internet to subscribers. *See 2022 Communications Marketplace Report*, 37 FCC Rcd at 15653, para. 214. Although some virtual MVPDs (vMVPDs) carry broadcast stations, the issue of whether section 325 and our retransmission consent regulations apply to vMVPDs remains an open question. Therefore we decline to include vMVPDs as part of this rulemaking. *See infra* note 97.

⁴⁹ NAB Comments at 7; Affiliates Associations Comments at 7. NAB also notes that the database would be over inclusive as well because it would provide too much information for a consumer only concerned with learning about “providers of MVPD service available to them,” but at the same time this information might not be “granular enough” for any particular consumer if the information is organized by Nielsen Designated Market Area” because they would not be able to see which MVPDs offer service to their address. NAB Comments at 7 & n.20. We believe the information we will require to be reported strikes the right balance between arming consumers and their surrogates with more information, while also limiting the reporting burdens, which will primarily fall on MVPDs, not broadcasters.

broadcast signal carriage actually occur.”⁵⁰ Therefore, according to NAB, the Commission should require MVPDs to report on both impasses and “on all retransmission consent agreements successfully reached without any negotiating impasses,” if the Commission requires reporting at all.⁵¹

19. We disagree with these commenters and find that their concerns do not undermine our rationale for collecting blackout information from MVPDs. First, as set forth in this section, basic blackout data reported to the Commission will assist the Commission and Congress in the development of public policy relating to retransmission consent.⁵² As this information is not readily available elsewhere, we reject NTCA’s argument that the collection of only limited data on blackout will be useless.⁵³ Second, blackout reporting will increase transparency—not confusion—around blackouts for both the public and policymakers. As explained in the *NPRM*, giving the public access to aggregate data on broadcast station blackouts will help consumers understand the extent to which blackouts might be a problem in their own locality as well as across the country.⁵⁴ Access to a consolidated source of blackout data may better enable consumers to investigate which MVPD service providers have a history of blackouts. NAB and the Affiliates Associations predict that few individual consumers will go to the Commission’s website and benefit from the blackout data we make publicly available.⁵⁵ While it is difficult to predict the extent to which individual consumers will make use of the data, we also anticipate that public advocacy groups, journalists, and researchers—acting in part as surrogates for consumers—will use the publicly available information in the blackout database to better investigate the issue of broadcast station blackouts in order to educate the public

20. Further, we do not find it misleading that other blackouts not caused by a retransmission consent negotiation impasse will not be included in the Commission’s database about broadcast station blackouts. These other blackouts are outside the scope and purpose of this current proceeding. Similarly, we decline to require that MVPDs also report every successful retransmission consent negotiation, as NAB proposes.⁵⁶ We are unconvinced that such a requirement would create necessary context for policymakers or the public to understand “the breadth of impasses involving any one pay TV operator.”⁵⁷ Even if this information might be of interest to consumers, we believe consumers would have a greater interest in blackout data, and the burden such a requirement would impose on MVPDs—and small cable operators in particular—outweighs the marginal benefit such information would provide. Further, while some of the additional information commenters urge the Commission to collect might inform assessments of the causes of blackouts and public policy options for reducing their frequency, the Commission can reasonably proceed incrementally. By doing so, the Commission can gain an understanding of the frequency, timing, duration, and consumer impact first and then revisit the question of collecting additional information if doing so appears necessary to further the Commission’s understanding of the retransmission consent process and the possible need for regulatory reform.

⁵⁰ NAB Reply Comments at 4.

⁵¹ *Id.* at 1.

⁵² *Amendment of Part 76 of the Commission’s Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections*, Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974) (imposing a public inspection file requirement on cable operators, noting that “[i]f the public is to play an informed role in the regulation of cable television, it must have at least basic information about a local system’s operations and proposals”).

⁵³ NTCA Comments at 1.

⁵⁴ *NPRM*, 2023 WL 8889607 at *4, para 12.

⁵⁵ Affiliates Associations Reply Comments at 7; NAB Comments at 7.

⁵⁶ NAB Reply Comments at 1-4

⁵⁷ *Id.* at 4.

21. In addition, we reject NAB's allegation that blackout reporting may incentivize MVPDs to purposefully increase the number of broadcast station blackouts in order to garner support for reform to the retransmission consent regime.⁵⁸ We are persuaded by NCTA's rebuttal that "[c]able subscribers can and do cancel service during programming blackouts, and a customer lost to a competitor during a blackout may be a customer lost forever. . . . Cable operators therefore have strong market-driven incentives to successfully conclude all carriage negotiations and prevent outcomes that could aggravate subscribers and encourage them to look for competitive alternatives."⁵⁹ Aside from the market incentive, the Commission already has in place a complaint process to address retransmission consent impasses. Any broadcaster who believes that an MVPD is not negotiating for retransmission consent in good faith can file a good faith complaint with the Commission.⁶⁰

B. Legal Authority

22. We conclude that sections 325 and 403 of the Act and the Commission's ancillary authority provide ample authority for the blackout reporting requirements.⁶¹ We also conclude that the blackout reporting requirements are consistent with the Administrative Procedure Act (APA), the Paperwork Reduction Act (PRA), and the First Amendment.

23. We affirm the Commission's tentative conclusion in the *NPRM* that section 325 of the Act provides the Commission with authority to mandate blackout reporting for MVPDs. Section 325(b)(3)(A) of the Act grants the Commission broad authority to "establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent."⁶² The Commission has previously concluded that "this provision grants the Commission authority to adopt rules governing retransmission consent negotiations[.]"⁶³ In addition, Congress directed the Commission to consider the impact of retransmission consent on cable rates.⁶⁴ Separately and in addition, section 325(b)(3)(C) mandates that broadcasters and MVPDs negotiate retransmission consent in good faith.⁶⁵ The Commission has express statutory authority to adopt rules implementing this requirement.⁶⁶ We agree with NCTA that collection of information on blackouts is consistent with our role in the retransmission consent process as provided in sections 325(b)(3)(A) and (C) of the Act.⁶⁷ Thus, we conclude that the blackout reporting requirements fall squarely within the Commission's authority under both section 325(b)(3)(A) and section 325(b)(3)(C).

24. We disagree with commenters who argue that no useful information will be gained because the Commission has no authority to dictate the outcome of a retransmission consent dispute, and

⁵⁸ NAB Comments at 8-10; NAB Reply Comments at 5-6.

⁵⁹ NCTA Reply Comments at 2.

⁶⁰ 47 CFR §§ 76.65(c), 76.65(e).

⁶¹ 47 U.S.C. §§ 325, 403, 4(i), 303(r). Because we have ample authority under these provisions, we need not rely on sections 632 or 335(a) of the Act, or our Title III licensing authority as proposed in the *NPRM*, and therefore we do not address commenters' arguments concerning these sections of the Act. 47 U.S.C. §§ 552, 335(a); Title III, § 301 *et seq.*; *NPRM*, 2023 WL 8889607 at *12-13, paras. 32-33.

⁶² 47 U.S.C. § 325(b)(3)(A).

⁶³ *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3371, para. 30 (2014).

⁶⁴ *Id.* See 47 U.S.C. § 325(b)(3)(A).

⁶⁵ *Id.* § 325(b)(3)(C).

⁶⁶ *Id.*

⁶⁷ NCTA Reply Comments at 2-3.

therefore cannot do anything with this information.⁶⁸ These commenters misunderstand our purpose. Nor is our goal to monitor each negotiation impasse “to somehow better prepare the agency to address the minuscule fraction of impasses that result in the filing of good faith complaints.”⁶⁹ As discussed above, blackout reports will allow us to assess the functioning of the retransmission consent process and its impact on competition and consumers consistent with our statutory mission, not to dictate the outcome of retransmission consent disputes. While some blackouts could result in the filing of a retransmission consent complaint, all blackouts cause frustration and confusion for the affected subscribers along with an indefinite disruption to the broadcast programming of the blacked out station(s) on the consumers’ preferred video service platform. Further, the record indicates that increasing retransmission consent rates can lead to blackouts,⁷⁰ and that these disruptions to consumers can affect MVPDs’ ability to retain customers.⁷¹ Contrary to NAB’s dismissal of blackout reporting as useless and unnecessary to respond to congressional inquiries,⁷² we find that the blackout reports will allow the Commission to better assess the functioning of the retransmission consent process as envisioned under the Communications Act and the consequences of breakdowns, and to better advise Congress on the state of the retransmission consent regime and its effectiveness with respect to relevant policy goals.⁷³

25. Contrary to NAB and the Affiliates Associations’ arguments, section 325 provides the Commission with authority to require the disclosure of basic blackout data. NAB and the Affiliates Associations contend that the Commission’s section 325 authority allows it to “adopt rules governing good faith negotiations and adjudicate complaints of violations of those rules, but that is the extent of its involvement in the retransmission consent negotiation process.”⁷⁴ We disagree. Section 325 grants us broader authority than that envisioned by NAB and the Affiliates Associations. Their arguments are inconsistent with the express terms of the statute, which directs the Commission to issue regulations governing the “exercise . . . of the right to grant retransmission consent” and to specifically consider “the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier.”⁷⁵ Blackout reporting will inform assessments of the effects of blackouts on competition, which in turn affects rates. Moreover, the Act directs the Commission to issue regulations pertaining to “negotiat[ion] in good faith.”⁷⁶ Blackouts are the result of failed retransmission consent negotiations. An ongoing blackout reporting obligation will help the Commission assess the functioning of the retransmission consent process by providing greater visibility into when that negotiation process breaks down.

26. In addition, the Communications Act grants the Commission broad authority to take necessary steps to implement the Act’s mandates, and thus provides concurrent sources of authority for our actions to require blackout reporting. Sections 4(i) and 303(r) generally authorize the Commission to take any actions “as may be necessary” to carry out its statutory authority, including in this case to ensure

⁶⁸ NAB Comments at 4-5.

⁶⁹ Affiliates Associations Reply Comments at 5.

⁷⁰ ATVA Comments at 1-2; NCTA Comments at 1-2; NTCA Comments at 2-4; Skitter Comments at 3-6; NCTA Reply Comments at 2.

⁷¹ Skitter at 5; NCTA Reply Comments at 1-2.

⁷² NAB Comments at 4.

⁷³ See NCTA Comments at 2 (“Access to better information about negotiation impasses will help inform whether Congress or the Commission should update the retransmission consent rules.”). As noted in Section A above, this information will inform our Communications Marketplace Report.

⁷⁴ NAB Comments at 2; Affiliates Associations Reply Comments at 4-5.

⁷⁵ 47 U.S.C. § 325(b)(3)(A).

⁷⁶ 47 U.S.C. § 325(b)(3)(C).

that the Commission can properly administer the retransmission consent regulatory framework.⁷⁷

27. Similarly, we find authority for mandatory reporting in section 403 of the Act. Section 403 grants the Commission discretion to require disclosures on matters, like retransmission consent, that fall within the Commission’s jurisdiction.⁷⁸ As discussed above, the blackout reporting requirement will provide relevant information on the functioning of the retransmission consent process authorized by section 325 of the Act. Thus, the Communications Act authorizes the Commission to collect information it needs to perform its duties, and blackout reporting will assist us in this effort as explained above. In addition, the information collected will inform our statutorily-mandated Communications Marketplace Report.⁷⁹ As part of the report to Congress, the Commission is required to report on: (1) the state of competition in the communications marketplace, including competition to deliver video among MVPDs, broadcast stations, and DBS providers; and (2) assess whether “demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services.”⁸⁰

28. We disagree with NAB’s reading of section 403 of the Act as appropriate solely for instituting an inquiry, but “not adopt[ing] rules mandating ongoing reporting and the development of a public database.”⁸¹ As the Commission has previously explained, section 403 authorizes the Commission to launch inquiries “concerning . . . any question[] [that] may arise” under the Communications Act, including adopting mandatory reporting requirements.⁸² Indeed, as a general matter, the Commission

⁷⁷ See 47 U.S.C. § 154(i) (authorizing the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions”); 47 U.S.C. § 303(r) (the Commission shall “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter”); 47 U.S.C. § 325(b)(3)(A) (the Commission shall “establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection . . .”).

⁷⁸ 47 U.S.C. § 403 (“The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter.”); *Stahlman v. FCC*, 126 F.2d 124, 127 (D.C. Cir. 1942) (“[F]ull authority and power is given to the Commission with or without complaint to institute an inquiry concerning questions arising under the provisions of the Act or relating to its enforcement. This . . . includes authority to obtain the information necessary to discharge its proper functions, which would embrace an investigation aimed at the prevention or disclosure of practices contrary to public interest.”) (citing 47 U.S.C. § 403); *Barrier Communications Corp.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186, 10189, para. 8 (2020) (“Section 403 of the Communications Act . . . grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations.”); *In re: James A. Kay, Jr.*, WT Docket No. 94-147, Memorandum Opinion and Order, 13 FCC Rcd 16369, 16372, para. 10 (1998) (“[U]nder 47 U.S.C. § 403, the Commission enjoys wide discretion to initiate investigations with or without a complaint and has a responsibility to investigate where there is reason to believe that a licensee is violating the Commission’s rules or policies.”). See also 47 CFR § 1.1 (“The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time . . . for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations.”).

⁷⁹ 47 U.S.C. § 163.

⁸⁰ 47 U.S.C. § 163(b).

⁸¹ NAB Reply Comments at 2, n.4.

⁸² 47 U.S.C. § 403. See *Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Report and Order, 27 FCC Rcd 2650, 2675, para. 61 (2012) (finding “authority for mandatory reporting in section 403”). The Commission has proposed or adopted a number of reporting requirements pursuant to its authority under section 403. See, e.g., *Resilient Networks Amendments to Part 4 of the Commission’s Rules*

(continued....)

regularly imposes reporting requirements on its licensees pertaining to statutory and regulatory matters.⁸³ And the imposition of such reporting requirements in this instance is appropriate to allow us to assess the functioning of the retransmission consent process and its impact on competition and consumers.

29. We reject commenters' argument that the reporting requirements violate the Administrative Procedure Act (APA) and the Paperwork Reduction Act (PRA) because the reporting would "not serve any discernible purpose."⁸⁴ NAB argues that the proposal would "merely gather information for the sake of having information, with no identifiable next steps for that information" and "without any identified, legally permissible, and beneficial use for that information."⁸⁵ NAB also contends that that "[t]he proposal also would result in an information collection that violates the PRA because it is not necessary to a Commission function and has no practical utility."⁸⁶ Contrary to these assertions, we have clearly articulated the basis for the rulemaking and the need for the reporting requirements.⁸⁷

30. We are unpersuaded by the logic of the Affiliates Associations' argument that because the database would lack data on non-retransmission-consent-related blackouts, the database would "patently fail to accomplish" the goal of the proceeding to provide the Commission, Congress, and the public with timely and specific information about broadcast station blackouts and "would thereby be arbitrary and capricious on its face."⁸⁸ As we explain above, this proceeding is limited to reporting on retransmission-consent-related blackouts.⁸⁹ Thus, the fact that we are not collecting information on cable

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Concerning Disruptions to Communications, PS Docket Nos. 21-346, 15-80; ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking, 2024 WL 356876 (2024) (proposing that TV and radio broadcasters be required to report information in NORS and DIRS); *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Dockets Nos. 15-91, 15-94, Third Report and Order, 2023 WL 8543463 (2023) (establishing a WEA database for availability reporting); *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Improving 911 Reliability*, PS Dockets Nos. 15-80, 13-75; ET Docket No. 04-35, Second Report and Order, 37 FCC Rcd 13847 (2022) (reporting requirements pertaining to 911).

⁸³ See, e.g., *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, Second Report and Order, 27 FCC Rcd 4535 (2012) (requiring broadcast stations to maintain an online public file); *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254 (1998), *Sua Sponte Reconsideration*, 19 FCC Rcd 5647 (2004) (imposing public and political inspection file requirements on DBS providers); *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections*, Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974) (imposing a public inspection file requirement on cable operators, noting that "[i]f the public is to play an informed role in the regulation of cable television, it must have at least basic information about a local system's operations and proposals"). See also, e.g., 47 CFR § 73.3615 (requiring that broadcasters annually file Ownership Report FCC Form 323); *id.* § 64.2009 (requiring telecommunications carriers to maintain records on the use of their customers' proprietary network information (CPNI), notify the Commission when an opt-out mechanism does not work properly, and certify compliance with the Commission's CPNI safeguards on an annual basis).

⁸⁴ NAB Comments at 1-2.

⁸⁵ *Id.* at 5.

⁸⁶ *Id.*

⁸⁷ *Stilwell v. Office of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009) ("Under *State Farm*, we must uphold [the agency's] rule so long as it is reasonable and reasonably explained.") (citing *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983)).

⁸⁸ Affiliates Associations Reply Comments at 3.

⁸⁹ See *supra* para. 20.

network programming blackouts or blackouts on vMVPDs does not indicate that the reporting would fail to accomplish the goal of this proceeding. Similarly, as discussed above, requiring reporting of each successful negotiation provides no additional information about the narrow focus of this proceeding, which concerns retransmission-consent-related blackouts.

31. Finally, we reject NAB's contention that the blackout reporting requirements could be inconsistent with the First Amendment. NAB briefly claims that the reporting requirements "raise First Amendment issues, particularly given the lack of a factual predicate or a sound rationale for them."⁹⁰ At the outset, we note that we are not requiring broadcasters to submit the report, and the reporting requirement therefore does not affect broadcasters' First Amendment rights.⁹¹ Moreover, we have explained above our reasons for collecting the information.⁹²

C. Reporting Requirements

32. We adopt the proposal set forth in the *NPRM*, with some modifications based on commenter recommendations, to require notification to the Commission of both the start and conclusion of a broadcast station blackout. In the following section, we set forth the framework and requirements for blackout reporting.

33. *Reporting Framework.* As discussed further below, we will require two basic notifications from MVPDs experiencing a reportable blackout. The initial notification will provide basic blackout information, both public and confidential, to the Commission no later than two business days after a blackout becomes reportable (Initial Blackout Notification). The final notification, submitted no later than two business days after the end of the reportable blackout, will publicly identify the date retransmission resumed (Final Blackout Notification). This information will be collected through an online reporting portal designed, hosted, and administered by the Commission.⁹³ Public blackout information collected through the portal will then be available on the Commission's website. In addition, based on the recommendations of commenters, we clarify broadcasters' role in the reporting process and how reporting errors will be handled. We set forth the framework and requirements for blackout reporting in more detail below.

34. *Mandatory Reporting for MVPDs.* We adopt the *NPRM*'s proposal to require MVPDs that stop carrying broadcast signals pursuant to expired retransmission consent agreements, including cable operators and DBS providers (Reporting Entities),⁹⁴ to comply with the blackout reporting requirements detailed below.⁹⁵ Mandatory reporting will allow the Commission and the public to obtain a

⁹⁰ NAB Reply Comments at 3 & n.4.

⁹¹ In addition, we note that the Commission will not presume that the information submitted by MVPDs is uncontested or correct simply because of a broadcaster's failure to submit a correction to an MVPD report.

⁹² NAB does not further explain how the reporting requirements supposedly run afoul of the First Amendment. The one case cited by NAB in support of its argument is inapposite, as it involves the First Amendment right of association in connection with compelled disclosures that might implicate an individual's political or similarly sensitive affiliations. *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021) (holding that compelled disclosures of affiliation with advocacy groups or other associations are subject to exacting scrutiny). The reporting requirement, in contrast, does not implicate the right of association.

⁹³ *Infra* para. 54. We delegate to the Media Bureau the authority to establish the specific reporting procedures and identify the date on which the reporting requirement will become effective.

⁹⁴ See 47 CFR § 76.64(d) ("A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming."); *infra* Appendix A—Final Rule, § 76.68(d)(1).

⁹⁵ We note that this requirement would apply to any broadcast station electing retransmission consent and failing to reach a carriage agreement, including a station that has changed its election from must carry to retransmission

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comprehensive, timely view of broadcast station blackouts occurring on MVPD platforms nationwide and develop a historical database of basic blackout data. In contrast, voluntary reporting would likely create substantial gaps in data that would significantly impair such efforts, as has been the Commission's experience in the past with voluntary reporting.⁹⁶ To ensure that we obtain a sufficient overview of blackouts occurring, we conclude that blackout reporting should be mandatory for MVPDs.

35. Commenters, even those opposing the rulemaking, generally support our proposal that MVPDs be subject to the reporting obligation.⁹⁷ NAB "agree[s] that it would be less burdensome for affected MVPDs to make the proposed reports" and "urges the Commission not to impose a reporting requirement on broadcasters."⁹⁸ NCTA comments that it supports placing the reporting obligation on MVPDs "so long as such obligation in no way implies that the cable operator is at fault for the station no longer being carried on its system."⁹⁹ We confirm that the reporting requirements we adopt today are not intended to indicate fault or liability for a blackout, but to gather accurate and timely information on blackouts in an efficient and least burdensome manner.

36. The record supports our conclusion that it would be less burdensome for MVPDs than for broadcasters to mandatorily report this information promptly and accurately to the Commission.¹⁰⁰ As we explained in the *NPRM*, while both MVPDs and broadcasters are subject to the requirements of section 325 of the Act and the Commission's good faith rules, it is the responsibility of the MVPD, rather than the broadcaster, to stop retransmitting the broadcast station's signal, and thereby remove the programming that is subject to blackout from their MVPD platforms upon the expiration of a carriage agreement.¹⁰¹ Thus, as a practical matter, it is the MVPD who has the most ready access to and first-hand knowledge of when and where a broadcast station blackout occurs and which subscribers are affected, thereby ensuring that the Commission would receive the most complete, accurate, and up-to-date information.

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consent.

⁹⁶ See *Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Notice of Proposed Rulemaking, 26 FCC Rcd 7166, 7189-90, para. 57 (2011) (summarizing the Commission's unsuccessful attempt at voluntary outage reporting prior to the adoption of NORS and the part 4 rules: "previous provider participation in voluntary network-outage reporting was 'spotty,' the 'quality of information obtained was very poor,' and there was 'no persuasive evidence in the record that . . . all covered communications providers would voluntarily file accurate and complete outage reports for the foreseeable future or that mandatory reporting is not essential to the development, refinement, and validation of best practices.' Hence, mandatory reporting was adopted to ensure timely, accurate reporting.") (quoting *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16851-52, paras. 37-39 (2004)).

⁹⁷ ATVA Comments at 1-2; NAB Comments at 5 & n.14; Affiliates Associations Reply Comments at 5 & n.16; NCTA Comments at 1; Skitter Comments at 7. OMI briefly notes that vMVPDs should be included as reporting entities because "the industry considers them to essentially be cable systems." Letter from Keith J. Leitch, President, One Ministries, Inc., to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 27, 2024). Additionally, the Affiliates Associations assert that the Commission should "apply symmetrical treatment to vMVPDs and traditional MVPDs[.]" but also notes that it "would not support the proposed reporting rules even if vMVPDs were included." Affiliates Associations Reply Comments at 4, 11. Whether certain types of vMVPDs are MVPDs remains an open question, which this Order does not address.

⁹⁸ NAB Comments at 5 & n.14.

⁹⁹ NCTA Comments at 1.

¹⁰⁰ ATVA Comments at 2; NAB Comments at 5 & n.14; Affiliates Associations Reply Comments at 5 & n.16; NCTA Comments at 1; Skitter Comments at 7.

¹⁰¹ 47 U.S.C. § 325(a).

37. *Voluntary, Supplemental Reporting for Broadcasters.* In addition, we are persuaded that broadcasters be allowed to voluntarily submit their own supplemental notices to an MVPD's initial or final blackout notification if a broadcaster believes an MVPD notice involving that broadcaster contains a substantive error. We sought comment in the *NPRM* on whether we should also adopt a reporting requirement for broadcasters. While NAB opposes mandatory blackout reporting for broadcasters, it does support "allowing broadcasters to voluntarily provide information on disruptions in service when or if they believe it is appropriate or necessary to correct erroneous information from an MVPD."¹⁰² We agree with NAB that it is unnecessary to impose a blackout reporting requirement on broadcasters, as this may create the potential for conflicting or duplicative reports.¹⁰³ Accordingly, we will allow the broadcast station licensee involved in the reported blackout to submit a supplemental notice to correct a suspected error.¹⁰⁴ We therefore require MVPDs to report Broadcast Station Blackouts as the primary Reporting Entities and allow broadcasters to voluntarily supplement those reports, which we believe will improve the overall accuracy of the reporting by better addressing errors and avoiding conflicting reports.¹⁰⁵

38. *Errors.* Whether in response to a broadcaster correction or not, we will require all reporters to correct substantive errors in a blackout notice. In their supplemental notice, broadcasters should indicate which field(s) in the MVPD notice contained a substantive error and detail what they believe is the correct or full information. The reporting MVPD, that is, the Reporting Entity, will be notified of the broadcaster filing and be required to correct the information in its own blackout notice if it believes the notice does in fact contain an error.¹⁰⁶ NCTA asks that there be room for MVPD error in reporting, particularly given that "[t]here is always a risk that there will be some mistakes in a disclosure given the potential volume of information that may have to be reported (e.g., if a blackout involves numerous stations owned by a station group) and the short time frame MVPDs will be given to make the reports."¹⁰⁷ We agree with NCTA and will require that all reporters "make a good faith effort to provide accurate information" and correct errors in either an initial or final blackout notice or supplemental notice submitted as soon as reasonably possible after discovery of the error.¹⁰⁸ Each filer will be responsible for the accuracy of the information furnished.¹⁰⁹ In line with NCTA's proposal, we will not expect either Reporting Entities or broadcasters to correct non-substantive errors in a blackout notice.¹¹⁰

39. *Definition of Broadcast Station Blackout.* For the purposes of this reporting rule, we define a "Broadcast Station Blackout" as "any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission."¹¹¹ Although NCTA asks us to draw a distinction between "an MVPD's decision not to

¹⁰² NAB Comments at 5-6 & n.14. In addition, OMI briefly remarks that broadcast stations—in particular, those that have selected must-carry status—should be allowed to self-report as well: "[a]llowing stations to self-report that they are being blacked out by MVPDs in these cases will help raise the visibility of such black outs [sic]." OMI Comments at 3.

¹⁰³ We therefore decline to adopt OMI's suggestion.

¹⁰⁴ As noted above, the Commission will not presume that the information submitted by MVPDs is uncontested or correct simply because of a broadcaster's failure to submit a correction to an MVPD report.

¹⁰⁵ This reporting should be limited to the factual information requested; it should not be used as a mechanism to file complaints regarding the retransmission consent negotiation process.

¹⁰⁶ 47 CFR § 1.17 (requiring truthful and accurate statements to the Commission).

¹⁰⁷ NCTA Comments at 4-5 & n.15.

¹⁰⁸ *Id.*

¹⁰⁹ 47 CFR § 1.17; *infra* Appendix A, § 76.68(a).

¹¹⁰ NCTA Comments at 4-5 & n.15.

¹¹¹ *Infra* Appendix A, § 76.68(d)(2).

renew a carriage agreement” and “the loss of a signal during an ongoing dispute over the terms of carriage,” we decline to do so as it is not clear that this is a meaningful distinction from a consumer perspective.¹¹² To encompass all blackouts occurring as a result of a retransmission consent dispute, we include all commercial full power, Class A, and low power television (LPTV) broadcast stations within the definition of “commercial television broadcast station.” OMI agrees, noting that all LPTV and Class A stations should be included in reporting and that “[m]any LPTVs and Class A stations are carried on cable systems” today.¹¹³ We sought comment in the *NPRM* on this definition and whether there were blackout instances in which MVPDs are required to cease retransmitting only some programming streams of a broadcast station but not others.¹¹⁴

40. We conclude that it is appropriate to include all Class A and LPTV stations within the definition of “commercial television broadcast station” and clarify that the blackout of any stream of a commercial television broadcast station on an MVPD platform due to a lapse of retransmission consent would constitute a Broadcast Station Blackout. In its comments NCTA did not directly address our question of whether partial broadcast station blackouts occur, but recommends applying the proposed reporting requirements only to the primary streams of commercial full power stations and only to LPTV stations, Class A stations, and multicast streams if they “carry a network feed (e.g., Big Four, CW, Telemundo, Univision, and Unimas).”¹¹⁵ NCTA argues that this would reduce MVPD reporting burdens and better filter reporting to notable blackouts.¹¹⁶ While we seek to reduce the reporting burden on MVPDs as much as possible, we are unpersuaded that the cost of reporting blackouts of all commercial television broadcast station streams outweighs the benefits of reporting. Limiting reporting to blackouts of full power stations’ primary streams and Class A and LPTV stations’ network feeds would limit the Commission’s visibility into the retransmission consent marketplace as it is unclear how many blackouts and how much consumer harm this reporting limitation would exclude. NCTA notes that “Congress and the Commission have long viewed LPTV stations, Class A stations, and multicast streams differently from full power stations, as shown by the fact that they are generally not entitled to must carry.”¹¹⁷ However, like full power stations, Class A and LPTV stations—as well as their multicast streams—are subject to the requirements of section 325 of the Act and the Commission’s good faith rules.¹¹⁸ We therefore decline to exclude Class A, LPTV, and multicast streams from the definition of Broadcast Station Blackout, and will require MVPDs to report blackouts that occur on either a primary stream or multicast stream of a commercial full power, Class A, or LPTV station.¹¹⁹

41. In response to commenter recommendations, we also clarify that a Broadcast Station Blackout would not include scenarios where an MVPD rejects a broadcaster’s claim of must-carry status. We therefore decline to extend the definition of a Broadcast Station Blackout to include instances where an MVPD rejects a broadcaster’s must-carry claim, as OMI advocates. OMI argues that the Commission

¹¹² NCTA Comments at 6.

¹¹³ OMI Comments at 3.

¹¹⁴ *NPRM*, 2023 WL 8889607 at *7, para. 21.

¹¹⁵ NCTA Comments at 2-3.

¹¹⁶ *Id.* at 3.

¹¹⁷ *Id.*

¹¹⁸ 47 U.S.C. § 325(a) (“... nor shall *any* broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.”) (emphasis added); 47 U.S.C. § 325(b)(2)(A) (“This subsection shall not apply... to retransmission of the signal of a noncommercial television broadcast station.”).

¹¹⁹ *Infra* Appendix A, § 76.68(a)(1)(ii) (requiring the reporting of “the commercial television broadcast station or stations no longer being retransmitted, including the call sign, Facility ID, the network affiliation(s), if any, of *each affected primary and multicast stream, and the unaffected streams, if any*”) (emphasis added).

should expand the definition of a Broadcast Station Blackout to include “[w]henver a must-carry station is blacked out of carriage on an MVPD in any part of the market that the MVPD covers for which the must-carry station desires carriage.”¹²⁰ OMI contends that reporting these instances of denied carriage would help raise awareness of the carriage difficulties faced by independent broadcasters.¹²¹ We do not find it appropriate to include instances of denied must-carry status within the definition of what constitutes a retransmission-consent related blackout.¹²² Broadcasters exercise their must-carry rights pursuant to a different regulatory framework than the retransmission consent framework and those disputes are outside the bounds of this rulemaking.¹²³

42. *Reporting Threshold.* We require Reporting Entities to report all Broadcast Station Blackouts that last over 24 hours. We reject NCTA’s proposal that we require reporting only for blackouts lasting over 48 hours instead of over 24 hours.¹²⁴ NCTA argues that “most impasses are resolved within 48 hours” and therefore “it would be more reasonable—and less disruptive to ongoing negotiations—to require reporting only for blackouts that last more than 48 hours.”¹²⁵ In the absence of details on the number of disputes resolved in the first 24 hours versus the second 24 hours—information that will only be available once this reporting requirement is adopted, as this information is not readily or routinely available from existing public sources—we decline to revise our proposal. Although this modification could ease the reporting burden on MVPDs, it would potentially limit the Commission’s and the public’s understanding of the frequency and duration of blackouts occurring in the retransmission consent marketplace. This revision would also limit insight into consumer harm, as there would be no data on potentially significant one-day blackouts of marquee programming.

43. We therefore affirm the *NPRM*’s tentative conclusion that a 24-hour reporting threshold will provide a sufficient level of information to build a more precise and complete picture of the state of blackouts that have a significant impact on consumers. Blackouts lasting over 24 hours are more likely to cause consumer harm (potential loss of marquee programming event), whereas blackouts of shorter duration are more likely to have a lesser impact on viewers, and thus we conclude that we should not impose reporting requirements on blackouts lasting 24 hours or less. We find that this threshold appropriately balances the burdens on Reporting Entities and the information needs of the Commission. If in fact the data collected shows that a significant number of blackouts lasting 24 hours are resolved within 48 hours, the Commission may reconsider this reporting threshold in the future and whether the burden of reporting blackouts resolved within 48 hours would then outweigh the benefits of reporting such blackouts.

44. *Reporting Process.* Reporting Entities will submit two notifications via the online reporting portal: an Initial Blackout Notification shortly after the beginning of a reportable Broadcast Station Blackout and a Final Blackout Notification after resumption of carriage. Below we lay out the requirements of the initial and final blackout notices and discuss specific issues raised in the record

¹²⁰ OMI Comments at 2.

¹²¹ *Id.* at 3.

¹²² We note that any broadcaster that believes they have been improperly denied must-carry status by an MVPD may file a must-carry complaint with the Commission. 47 CFR § 76.61(a)(3). The Commission can readily ascertain the nature and number of must-carry complaints, and commenters have not alleged that this process fails to provide a reasonable basis for evaluating the functioning of the must-carry regime.

¹²³ Likewise, OMI’s request to include out-of-market broadcast stations that are seeking a market modification is also outside the scope of this rulemaking, and we therefore decline to include these scenarios in the definition of Broadcast Station Blackout. Letter from Keith J. Leitch, President and Engineer, One Ministries, Inc., to Marlene H. Dortch, Secretary, FCC, at 1 (Aug. 7, 2024).

¹²⁴ NCTA Comments at 5.

¹²⁵ *Id.*

pertaining to the reporting requirements of each.

45. *Initial Blackout Notification.* In the event of a Broadcast Station Blackout lasting over 24 hours, the Reporting Entity must submit an Initial Blackout Notification no later than two business days after the 24-hour period has elapsed.¹²⁶ As we proposed in the *NPRM*, the following information must be reported in the Notification and will be available to the public: the name of the Reporting Entity; the station or stations no longer being retransmitted, including the call sign, Facility ID¹²⁷, the network affiliation(s), if any, of each affected primary and multicast stream, and the unaffected streams, if any; the Designated Market Area(s) in which affected subscribers reside; and the date and time of the initial interruption to programming.¹²⁸ NCTA asks that multi-station blackouts being negotiated by the same broadcast station group be disclosable in the same initial notice.¹²⁹ We agree with this request, and direct the Media Bureau to incorporate it when creating the reporting forms, including the ability to report multiple streams of blacked-out programming on the same form. This approach will minimize the burden on Reporting Entities, allowing them to provide all information about any given blackout in a single Initial Blackout Notification regardless of the number of stations or streams affected. Additionally, Reporting Entities must report a good faith estimate of the number of subscribers affected.¹³⁰ Given that market-by-market subscriber data can be particularly sensitive and is information not routinely made public by MVPDs, we will treat this estimate as presumptively confidential.¹³¹ Below, we discuss specific issues raised in the record pertaining to the reporting requirements of the Initial Blackout Notification.

46. *Reporting Window.* We adopt NCTA's recommendation that the reporting window for the Initial Blackout Notification be extended to two business days after a blackout becomes reportable, rather than within 48 hours of the start of a blackout, as proposed in the *NPRM*.¹³² NCTA explains that extending the deadline to report a blackout would "more reasonably accommodate[] the MVPD's ability to gather and submit the information, particularly given this will be occurring during a difficult negotiation."¹³³ We agree with NCTA that extending the reporting window for the Initial Blackout Notification will reduce MVPDs' reporting burden while still allowing the Commission to receive timely notice of a new blackout.

47. *Subscriber Data.* Based on feedback from commenters, we revise the requirement regarding submission of subscriber data to require only a good faith estimate of the number of subscribers affected by the reported blackout, rather than the exact number, as proposed in the *NPRM*.¹³⁴ ATVA suggests that "the Commission require only an estimate of the number of subscribers," arguing that "reasonable estimates will fully serve [the Commission's] goal[s] while reducing [MVPDs'] compliance

¹²⁶ *Infra* Appendix A, § 76.68(a)(1).

¹²⁷ We require MVPDs to include the station's Facility ID, in addition to the station's call sign, to improve the accuracy and reliability of the reported information. Station call signs are how the viewing public identifies their local stations. But call signs can change, whereas a station's Facility ID does not. We find that this additional information will not be unduly burdensome for an MVPD to provide, as the Facility ID for any station can be quickly found by entering its current call sign on the Commission's Licensing and Management System Facility Search website (<https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilitySearch.html>) or the Online Public Inspection File (<https://publicfiles.fcc.gov/>).

¹²⁸ *Infra* Appendix A, § 76.68(a)(1); *NPRM*, 2023 WL 8889607 at *8, para 24.

¹²⁹ NCTA Comments at 4.

¹³⁰ *Infra* Appendix A, § 76.68(b).

¹³¹ *Id.* See *infra* para. 49.

¹³² *NPRM*, 2023 WL 8889607 at *8, para. 24.

¹³³ NCTA Comments at 5.

¹³⁴ *NPRM*, 2023 WL 8889607 at *8, para. 24.

burdens.”¹³⁵ In contrast, NCTA contends that no subscriber data is necessary for the purpose of identifying when and where Broadcast Station Blackouts occur, and that identifying just the counties impacted would be sufficient.¹³⁶ In addition, NCTA claims that information on the number of subscribers affected by a Broadcast Station Blackout on an MVPD’s platform is not the type of information “that NCTA members compile for external disclosure,” and therefore the burden of compiling this subscriber data outweighs the benefits of its submission.¹³⁷

48. Considering commenters’ arguments, we conclude that requiring Reporting Entities to submit a good faith subscriber estimate best balances the benefits of disclosure to the Commission with MVPDs’ burden of compiling the information. We disagree with NCTA’s assessment that “the Commission has not explained why it needs disclosure of such highly confidential information when, as noted, most blackouts last a short period of time, and when less intrusive disclosure options are available to assess the impact of a blackout,” such as “providing information on counties affected by the blackout.”¹³⁸ As we explained in the *NPRM*, subscriber data is one of the key metrics by which a blackout’s impact can be measured.¹³⁹ To understand the extent of consumer harm resulting from these blackouts we need to know not only when and where blackouts are occurring, but also how many subscribers are impacted. This information is crucial to measuring the scope of a blackout, particularly given the recent reporting that fewer blackouts are impacting an increasing number of subscribers.¹⁴⁰ We agree with ATVA that a good faith estimate of the number of impacted subscribers sufficiently serves this information collection purpose.¹⁴¹ We are unpersuaded by NCTA’s argument that providing these subscriber estimates is too burdensome because MVPDs typically do not compile such information for “external disclosure.”¹⁴² MVPDs track the number of subscribers to a system in the regular course of business. Indeed, under the current informal notification process, MVPDs routinely provide Commission staff with subscriber counts. Further, we find that any initial difficulty in gathering the information will be mitigated by the extended deadline this Order provides for filing the Initial Blackout Notification with the Commission.¹⁴³

49. *Confidentiality.* We will require that Reporting Entities confidentially submit good faith estimates of affected subscribers to the Commission.¹⁴⁴ In its comments, ATVA notes that it “supports the Commission’s proposal to permit confidential submissions of such numbers.”¹⁴⁵ In the *NPRM*, we explain that Reporting Entities would be able to opt for confidential treatment of the subscriber count data provided by designating the data as confidential within the portal, rather than filing a separate request with the Commission.¹⁴⁶ Given commenter concerns about the public availability of this data and the

¹³⁵ ATVA Comments at 2.

¹³⁶ NCTA Comments at 3-4.

¹³⁷ *Id.*

¹³⁸ NCTA Comments at 4 & n.11.

¹³⁹ *NPRM*, 2023 WL 8889607 at *8, para. 24.

¹⁴⁰ Peter Leitzinger, *Retrans Recap 2023: Fewer Agreements but Subscriber Impact Remains High*, Broadcast Investor, S&P Capital IQ Pro (Apr. 1, 2024), available at <https://perma.cc/RZ9D-L8JN>; *supra* para. 10.

¹⁴¹ ATVA Comments at 2.

¹⁴² NCTA Comments at 3-4.

¹⁴³ *See supra* para. 46.

¹⁴⁴ *See supra* para. 45.

¹⁴⁵ ATVA Comments at 2.

¹⁴⁶ *NPRM*, 2023 WL 8889607 at *8, para. 24. NCTA comments that the Commission should clarify that subscriber “data cannot be obtained via a Freedom of Information Act [(FOIA)] request or otherwise.” NCTA Comments at 3 & n.10. We find that this information is of the type protected by FOIA’s Exemption 4, 5 U.S.C. § 552(b)(4), and by (continued....)

likelihood that all filers would choose to submit the data confidentially, and to avoid the potential for filers accidentally failing to request confidentiality, we find that it would be more efficient to forgo the opt-in box and presume that this subscriber data is confidential. This presumptively confidential treatment is consistent with Commission practice in other contexts.¹⁴⁷

50. *Other Reporting Categories.* Our final rule does not include additional reporting categories. Some commenters also recommend that we collect either more or less blackout information in the Initial Blackout Notification. NCTA suggests identifying the station or station group that negotiates retransmission consent on behalf of a blacked-out station. It contends that identifying the negotiator would help track sidecar arrangements, which “will help inform the Commission’s understanding of their impact on retransmission consent negotiations.”¹⁴⁸ Seeking a more comprehensive disclosure, NTCA proposes that MVPDs should be permitted “to supply information about the circumstances of a blackout,” arguing that without more information the blackout notice is not useful.¹⁴⁹ Similarly, Skitter supports the reporting requirements but urges the Commission to take a deeper look into the retransmission consent marketplace and undertake a national review of retransmission consent rates.¹⁵⁰ Conversely, NCTA argues that there is no need for MVPDs to manually enter the broadcast station group that owns the station in the blackout notice: “The Commission possesses this ownership information in its own databases, and can populate ownership information once a cable operator has entered the call sign for the blacked-out station.”¹⁵¹

51. We decline to incorporate these commenter suggestions into the reporting requirements at this time. The information we require Reporting Entities to submit in the Initial Blackout Notification strikes an appropriate balance between the benefits gained by reporting the information and the burden imposed on those reporting. We therefore reject NCTA’s suggestion that we require Reporting Entities to identify the negotiator involved in a retransmission consent dispute. Even if the negotiator is not another station, this does not appear necessary at this time to achieve the goals of this proceeding.¹⁵² It is not clear that this information is essential, and in balancing reporting benefits and burdens, we have limited this collection to only the essential information. Likewise, we are unconvinced that requiring Reporting Entities to report on the circumstances of a blackout would be practical. NTCA itself notes that before Reporting Entities could disclose details of the negotiation such as the price, terms, and conditions of

(Continued from previous page)

treating the information as presumptively confidential, the Commission will not make it routinely available to the public. Under our rules, however, persons have the right to request access to these data under FOIA, 47 CFR § 0.461 (“Requests for inspection of materials not routinely available for public inspection”), and, while limited, there are circumstances where we may grant such requests, for example, if the information has been publicly revealed elsewhere.

¹⁴⁷ See e.g., *Application of SES S.A. and Intelsat Holdings S.à.r.l. for Consent to Transfer Control of Licenses Held by Intelsat Holdings S.à.r.l. and its Subsidiaries*, SB Docket No. 24-267, Protective Order, DA 24-958, Appendix A, paras. 7-8 (SB 2024) (classifying as highly confidential information about number of customers); *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Cable Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266, Order, 2024 WL 1344669, at *2, paras. 2, 4 (OEA 2024) (stating that information submitted in response to the cable price survey questionnaire for 2024, including the number of subscribers, will only be made available to the public “in aggregate form as averages representing segments of the industry.”).

¹⁴⁸ NCTA Comments at 4 & n.14.

¹⁴⁹ NTCA Comments at 2, 4.

¹⁵⁰ Skitter Comments at 7-8.

¹⁵¹ NCTA Comments at 4.

¹⁵² If an MVPD believes that stations are conducting an improper joint negotiation, it may choose to seek relief via the good faith complaint process. 47 CFR §§ 76.65(b)(1)(viii), 76.65(c).

carriage, the Commission would have to nullify any nondisclosure provisions agreed to by MVPDs.¹⁵³ Whether or not this is correct, our goal in collecting information on retransmission-consent related blackouts is not to sit in judgment of every negotiation, but to assess, more generally, the overall functioning of the retransmission consent market and its impact on consumers.¹⁵⁴ Moreover, adding voluntary fields that would allow MVPDs to provide this information if they so choose would add complexity to the form, which we find would increase the likelihood of mistakes (and disputes regarding the accuracy or completeness of the information) for little benefit. In addition, we find that Skitter's request to undertake a national rate review of retransmission consent fees is outside the scope of this rulemaking, which is focused on adopting blackout reporting requirements.¹⁵⁵ Finally, we reject NCTA's suggestion that the reporting portal automatically populate the broadcast station group or other owner for listed stations. Nonetheless, given the availability of ownership information in other Commission databases, we find that having the Reporting Entities identify the station by call sign and facility ID will sufficiently identify the stations involved and be less burdensome for reporters.¹⁵⁶ We therefore decline to adopt the *NPRM*'s proposal to require identification of the broadcast station group.

52. *Final Blackout Notification.* No later than two business days after the resumption of carriage to subscribers, Reporting Entities must submit a Final Blackout Notification as an update to the Initial Blackout Notification.¹⁵⁷ This public filing will simply state the date on which retransmission resumed for each station included in the Initial Blackout Notification.¹⁵⁸ As an update to the Initial Blackout Notification, we envision that Reporting Entities will be able to easily update the information in the reporting portal for each station as it resumes retransmission. If retransmission resumes only for certain programming streams (e.g., multicast streams but not the primary stream), Reporting Entities will specify this on the final notice, following the format of the initial notice.

53. In the *NPRM* we requested comment on this Notification, including how to handle permanent blackouts. NCTA proposes that in situations where “an MVPD provides notice of a Broadcast Station Blackout but negotiations are ultimately unsuccessful, no further notice [should] be required. If the operator decides later to start carrying the station again after an agreement lapses, the operator would provide subscriber notice of the addition, but in that circumstance should not be required to submit a ‘Final Blackout Notification.’”¹⁵⁹ We agree with NCTA that no additional notice should be required in the event of an unsuccessful negotiation, and we will consider a blackout permanent if no Final Blackout Notification is filed within three years of the Initial Blackout Notification. However, if a new agreement for carriage is reached within three years, we will consider that an end to the Broadcast Station Blackout and require the Reporting Entity to submit a Final Blackout Notification. In the event of a blackout lasting more than three years, i.e., more than a full carriage cycle, we will treat the station as one that is no longer carried by the MVPD, rather than one involved in a continuing blackout.¹⁶⁰

54. *Submissions.* We adopt the *NPRM*'s proposal to use an online reporting portal to

¹⁵³ NTCA Comments at 4. NAB disputes that the Commission has authority to “require the prices, terms, and conditions of retransmission consent proposals or agreements to be made public, or to declare provisions of privately negotiated contracts invalidated by regulatory fiat.” NAB Reply Comments at 6-7.

¹⁵⁴ *Good Faith Order*, 15 FCC Rcd at 5454-55; *supra* para. 4.

¹⁵⁵ Skitter Comments at 7-8.

¹⁵⁶ *See supra* para. 45.

¹⁵⁷ *Infra* Appendix A, § 76.68(a)(2).

¹⁵⁸ *Id.*

¹⁵⁹ NCTA Comments at 6.

¹⁶⁰ 47 CFR § 76.64(f)(2).

streamline reporting, modeled after the Commission's Network Outage Reporting System (NORS).¹⁶¹ The data to be reported will be filed with the Commission via this web-based system.¹⁶² As with NORS, the Commission will provide a file template as necessary to promote the ease of reporting, maintain a list of ongoing and past blackouts, and allow users to easily update or resolve blackout notices. Reporting Entities will use an electronic, "fill in the blank" template to report the required information on each blackout notice, which we anticipate will contain both open-field and drop-down text boxes to ensure that complete information about each station involved in a Broadcast Station Blackout can be quickly and easily provided. The blackout information to be reported will be available to the public, except for more sensitive information regarding subscriber counts, which Reporting Entities will submit confidentially. More specific submission instructions will be announced by the Media Bureau via public notice at least 30 days before the requirements go into effect.

55. *Costs and Benefits.* We affirm the *NPRM*'s tentative conclusion that this reporting is reasonable in light of the significant benefits to the Commission and consumers from having timely access to important and accurate information on service disruptions.¹⁶³ Moreover, nothing in the record suggests that it would be particularly difficult for MVPDs to compile the required information, given that they already collect this information in the ordinary course of business for their internal use. We therefore disagree with NTCA's contention that the reporting requirements will be an unreasonable burden to small MVPDs.¹⁶⁴ Skitter, a small cable operator, commented in support of the blackout reporting rule and noted that it believes the reporting obligation to be "logical and manageable, even for a small system such as Skitter."¹⁶⁵ We expect the only burden associated with the proposed reporting requirements would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations, even for small MVPDs, particularly given that an MVPD will be able to report a blackout affecting multiple stations or streams on the same blackout notice.¹⁶⁶ As a result, we expect that complying with our proposed reporting requirements would create a minimal administrative burden even for small entities, and that, on balance, the benefits to the public resulting from compiling and analyzing this blackout information would outweigh any potential burden.

56. *Digital Equity and Inclusion.* The Commission maintains a continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality. As such, in the *NPRM* we sought comment on whether any of the proposals discussed therein might promote or inhibit advances in diversity, equity, inclusion, and accessibility. While we did not receive any comments specifically responding to this request, we believe that the blackout reporting requirements will further our ongoing commitment to advance digital equity by endeavoring to better track Broadcast Station Blackouts across the country. As Skitter comments, for its customers "over-the-air reception is not an available alternative in the markets served by Skitter, which

¹⁶¹ Federal Communications Commission, *Network Outage Reporting System (NORS)*, <https://www.fcc.gov/network-outage-reporting-system-nors> (last updated Nov. 30, 2023).

¹⁶² In addition to the specific information discussed in this item, Reporting Entities will also be required to submit routine identification, contact, and certification information consistent with existing Commission practice. *See, e.g.*, FCC-2, Business Contacts and Certifications, <https://www.govinfo.gov/content/pkg/FR-2021-07-29/pdf/2021-16193.pdf>. This information may be pre-populated from data already provided to the Commission or entered for each filing as appropriate.

¹⁶³ *Supra* paras. 14-17.

¹⁶⁴ NTCA Comments at 3-4.

¹⁶⁵ Skitter Comments at 7.

¹⁶⁶ *Supra* paras. 45, 54.

are rural usually with no ability to receive off-air digital signals of the Big-4 and secondary networks.”¹⁶⁷ As a result, blackouts are particularly impactful on consumers in rural markets and underserved areas with limited video service alternatives. By fostering greater transparency to examine and address the functioning of the retransmission consent process and the impact on competition and consumers, we believe that the blackout reporting requirements will promote digital equity and accessibility.

IV. PROCEDURAL MATTERS

57. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁶⁸ 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.”¹⁶⁹ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix B.

58. *Final Paperwork Reduction Act Analysis.* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹⁷⁰ Any such requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),¹⁷¹ we requested specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.¹⁷² The Commission does not believe that the new information collection requirements will be unduly burdensome on small businesses. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B.

59. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A). The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

60. **IT IS ORDERED**, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 325, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r), 325, and 403 and section 401 of RAY BAUM’S Act of 2018, 47 U.S.C. § 163, that this *Report and Order* **IS HEREBY ADOPTED**.

¹⁶⁷ Skitter Comments at 4.

¹⁶⁸ 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

¹⁶⁹ 5 U.S.C. § 605(b).

¹⁷⁰ The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

¹⁷¹ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). See 44 U.S.C. § 3506(c)(4).

¹⁷² *NPRM*, 2023 WL 8889607 at *14, para. 35 (“seek[ing] specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees”). No commenter addressed SBPRA.

61. **IT IS FURTHER ORDERED** that the amendments of the Commission's rules as set forth in Appendix A **ARE ADOPTED** effective thirty days from the date of publication in the Federal Register. The Commission directs the Media Bureau to announce the compliance dates by subsequent Public Notice.

62. **IT IS FURTHER ORDERED** that the Commission's Media Bureau is delegated the authority to establish an electronic reporting system and process implementing the rules adopted in this *Report and Order*.

63. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

64. **IT IS FURTHER ORDERED** that Office of the Managing Director, Performance Program Management, **SHALL SEND** a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rule**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 to read as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

1. Add § 76.68 to Subpart D to read as follows:

§ 76.68 Reporting Requirements for Commercial Television Broadcast Station Blackouts.

- (a) *Information Required.* All information must be submitted to the Commission electronically in accordance with procedures specified by the Media Bureau by public notice. Each filer is responsible for the continuing accuracy and completeness of the information furnished.
- (1) In the event of a reportable Broadcast Station Blackout, the Reporting Entity shall, within two business days after 24 hours have elapsed since the initiation of a Broadcast Station Blackout, submit an Initial Blackout Notification. This Notification will be available to the public and shall identify:
 - (i) the name of the Reporting Entity;
 - (ii) the commercial television broadcast station or stations no longer being retransmitted, including the call sign, Facility ID, the network affiliation(s), if any, of each affected primary and multicast stream, and the unaffected streams, if any;
 - (iii) the Designated Market Area(s) in which affected subscribers reside; and
 - (iv) the date and time of the initial interruption to programming.
 - (2) No later than 2 business days after the resumption of carriage to subscribers, the Reporting Entity shall submit a Final Blackout Notification. This Notification will be available to the public and shall state, with respect to each station identified in the Initial Blackout Notification, the extent to which retransmission has resumed and shall include the date on which retransmission resumed.
- (b) *Confidential Subscriber Data.* In any Initial Blackout Notification, Reporting Entities shall submit an estimate of the number of subscribers affected. This information will be treated as presumptively confidential and will not be routinely available for public inspection.
- (c) *Supplemental Reporting.* The licensee of a commercial television broadcast station may seek correction of a Reporting Entity's Initial or Final Blackout Notification if the Notification involves the station and contains a substantive error. The licensee must submit any correction notice electronically in accordance with procedures specified by the Media Bureau by public notice.
- (d) *Definitions.*
- (1) *Reporting Entity.* The multichannel video programming distributor reporting a Broadcast Station Blackout.
 - (2) *Broadcast Station Blackout.* Any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission.

- (3) *Reportable Broadcast Station Blackout.* A Broadcast Station Blackout lasting over 24 hours but less than three years from the Initial Blackout Notification.

Commercial Television Broadcast Station. For the purposes of this section, a “commercial television broadcast station” includes all commercial full power, Class A, and low power television broadcast stations.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Reporting Requirements for Commercial Television Broadcast Station Blackouts, Notice of Proposed Rulemaking (NPRM)* released in December 2023.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. In this *Report and Order (Order)* we establish a reporting framework for Broadcast Station Blackouts occurring on multichannel video programming distributor (MVPD) platforms.⁴ We adopt the proposal in the *NPRM*, with some modifications based on the record developed in this proceeding, to require that the Commission be notified when there is a blackout of broadcast station programming on a cable or satellite TV platform (or other MVPD platform), lasting over 24 hours, as a result of a retransmission consent negotiation impasse. We require MVPDs to notify the Commission when a qualifying blackout occurs, where it happened, and when it has ended. We also require MVPDs to confidentially report to the Commission a good faith estimate of how many subscribers are experiencing a service disruption as a result of the blackout. In addition, broadcasters may voluntarily supplement MVPD notices if they believe the notices contain inaccurate or incomplete information. The reporting will enable the Commission to be more timely and accurately informed about MVPD service disruptions caused by breakdowns in the retransmission consent negotiation process. In addition, the reporting will also allow the Commission to gather basic information about such blackouts in a database to use on a forward-going basis to help inform the Commission and the public about the frequency and duration of such blackouts. The blackout reporting requirements we adopt today will better enable the Commission to assess the functioning of the retransmission consent process and the impact on competition and consumers as well as foster greater public transparency around blackouts caused by failed retransmission consent negotiations.

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

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

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

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the

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

² *Reporting Requirements for Commercial Television Broadcast Station Blackouts*, MB Docket No. 23-427, FCC 23-115, Notice of Proposed Rulemaking, 2023 WL 8889607 (Dec. 21, 2023) (*NPRM*).

³ 5 U.S.C. § 604.

⁴ *Supra*, Appendix A—Final Rule, § 76.68(d)(2) (defining “Broadcast Station Blackout” as “[a]ny time an MVPD ceases retransmission of a commercial television broadcast station’s signal due to a lapse of the broadcast station’s consent for such retransmission”).

proposed rules as a result of those comments.⁵ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

5. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA).⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

7. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.¹⁰ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.¹¹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹² Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.¹³

8. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹⁴ U.S. Census Bureau data for 2017 show that there

⁵ 5 U.S.C. § 604(a)(3).

⁶ *Id.* § 604(a)(4).

⁷ *Id.* § 601(6).

⁸ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” *Id.*

⁹ 15 U.S.C. § 632.

¹⁰ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹¹ *Id.*

¹² *Id.*

¹³ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

¹⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.¹⁵ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.¹⁷ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.¹⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹⁹ Based on industry data, there are about 420 cable companies in the U.S.²⁰ Of these, only seven have more than 400,000 subscribers.²¹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²² Based on industry data, there are about 4,139 cable systems (headends) in the U.S.²³ Of these, about 639 have more than 15,000 subscribers.²⁴ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

10. *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."²⁵ 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.²⁶ Based on industry data, only six cable system operators have

¹⁵ 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: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

¹⁶ *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.

¹⁷ 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>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

¹⁸ *Id.*

¹⁹ 47 CFR § 76.901(d).

²⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

²¹ 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).

²² 47 CFR § 76.901(c).

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

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

²⁵ 47 U.S.C. § 543(m)(2).

²⁶ *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).

more than 498,000 subscribers.²⁷ 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.²⁸ 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.

11. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.²⁹ Transmission facilities may be based on a single technology or combination of technologies.³⁰ 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.³¹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³²

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³³ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.³⁴ Of this number, 2,964 firms operated with fewer than 250 employees.³⁵ 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.³⁶ DIRECTV and DISH Network both exceed the SBA size standard for classification as a

²⁷ 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).

²⁸ 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).

²⁹ *See* U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁰ *Id.*

³¹ *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).

³² *Id.*

³³ *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁴ *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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>. At this time, the 2022 Economic Census data is not available.

³⁵ *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.

³⁶ *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).

small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

13. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.³⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.³⁹ Of this total, 2,964 firms operated with fewer than 250 employees.⁴⁰ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

14. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.⁴¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.⁴³ Of this total, 2,964 firms operated with fewer than 250 employees.⁴⁴ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

15. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers.

³⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁹ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴⁰ *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.

⁴¹ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴³ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴⁴ *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.

Wired Telecommunications Carriers⁴⁵ is the closest industry with an SBA small business size standard.⁴⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁵⁰ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁵¹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

16. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁵² Wired Telecommunications Carriers⁵³ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local

⁴⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁷ *Id.*

⁴⁸ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁴⁹ *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.

⁵⁰ 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>.

⁵¹ *Id.*

⁵² Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁵³ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁵ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁵⁶ *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.

service providers.⁵⁷ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Competitive Access Providers (CAPs)*. Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to CAPs. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.⁵⁹ Under the SBA small business size standard a Wired Telecommunications Carrier is a small entity if it employs 1,500 employees or less.⁶⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁶¹ Of that number, 2,964 firms operated with fewer than 250 employees.⁶² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 659 CAPs and competitive local exchange carriers (CLECs), and 69 cable/coax CLECs that reported they were engaged in the provision of competitive local exchange services.⁶³ Of these providers, the Commission estimates that 633 providers have 1,500 or fewer employees.⁶⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Open Video Systems*. The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is "Wired Telecommunications Carriers."⁶⁵ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.⁶⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁶⁷ Of this total, 2,964 firms operated with

⁵⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁵⁸ *Id.*

⁵⁹ See, U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017> <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶¹ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁶² *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.

⁶³ 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>.

⁶⁴ *Id.*

⁶⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁷ 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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

fewer than 250 employees.⁶⁸ Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

19. *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,”⁶⁹ 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)).⁷⁰ 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.⁷¹

20. 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).⁷² The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁷⁴ Of this number, 2,837 firms employed fewer than 250 employees.⁷⁵ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

⁶⁸ *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.

⁶⁹ The use of the term “wireless cable” does not imply that it constitutes cable television for statutory or regulatory purposes.

⁷⁰ 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).

⁷¹ 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.

⁷² 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>.

⁷³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁷⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>. At this time, the 2022 Economic Census data is not available.

⁷⁵ *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.

21. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses.⁷⁶ 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.⁷⁷ 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.⁷⁸ One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.⁷⁹

22. 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.⁸⁰ 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.

23. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁸¹ private-operational fixed,⁸² and broadcast auxiliary radio services.⁸³ They also include the Upper Microwave

⁷⁶ 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.

⁷⁷ See 47 CFR § 27.1218(a).

⁷⁸ 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>.

⁷⁹ 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.

⁸⁰ See 47 CFR § 27.1219(a).

⁸¹ See 47 CFR Part 101, Subparts C and I.

⁸² See *id.* Subparts C and H.

⁸³ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between

(continued....)

Flexible Use Service (UMFUS),⁸⁴ Millimeter Wave Service (70/80/90 GHz),⁸⁵ Local Multipoint Distribution Service (LMDS),⁸⁶ the Digital Electronic Message Service (DEMS),⁸⁷ 24 GHz Service,⁸⁸ Multiple Address Systems (MAS),⁸⁹ and Multichannel Video Distribution and Data Service (MVDDS),⁹⁰ where in some bands licensees can choose between common carrier and non-common carrier status.⁹¹ Wireless Telecommunications Carriers (*except* Satellite)⁹² is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁴ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁵ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

24. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services 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 Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.⁹⁶

25. 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

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two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁸⁴ See 47 CFR Part 30.

⁸⁵ See 47 CFR Part 101, Subpart Q.

⁸⁶ See *id.* Subpart L.

⁸⁷ See *id.* Subpart G.

⁸⁸ See *id.*

⁸⁹ See *id.* Subpart O.

⁹⁰ See *id.* Subpart P.

⁹¹ See 47 CFR §§ 101.533, 101.1017.

⁹² 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>.

⁹³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁴ 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>. At this time, the 2022 Economic Census data is not available.

⁹⁵ *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.

⁹⁶ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

26. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”⁹⁷ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁹⁸ 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 \$47 million or less in annual receipts as small.⁹⁹ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.¹⁰⁰ Of that number, 657 firms had revenue of less than \$25,000,000.¹⁰¹ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

27. As of June 30, 2024, there were 1,384 licensed commercial television stations.¹⁰² Of this total, 1,307 stations (or 94.4%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 3, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 30, 2024, there were 382 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,821 LPTV stations and 3,100 TV translator stations.¹⁰³ 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.

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

28. The adopted rule requires all MVPDs carrying broadcast programming pursuant to retransmission consent agreements, including cable operators and DBS providers (Reporting Entities),¹⁰⁴

⁹⁷ See U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting,”* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

⁹⁸ *Id.*

⁹⁹ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

¹⁰⁰ 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>. At this time, the 2022 Economic Census data is not available.

¹⁰¹ *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.

¹⁰² *Broadcast Station Totals as of June 30, 2024*, Public Notice, DA 24-644 (rel. July 3, 2024) (*July 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-644A1.pdf>.

¹⁰³ *Id.*

¹⁰⁴ 47 CFR § 76.64(d) (“A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.”); *supra*, Appendix A—Final Rule, § 76.68(d)(1).

to notify the Commission of both the start and conclusion of a Broadcast Station Blackout lasting over 24 hours. The initial notification will provide basic blackout information, both public and confidential, to the Commission no later than two business days after a blackout becomes reportable (Initial Blackout Notification). This initial information will include: the name of the Reporting Entity; the commercial stations no longer being retransmitted; the Designated Market Area (DMA) in which affected subscribers reside; and when the initial interruption to programming started. This approach will minimize the burden on Reporting Entities, allowing them to provide all information about any given blackout in a single Initial Blackout Notification regardless of the number of stations or streams affected. Reporting Entities must also include an estimate of the number of subscribers affected by the interruption. The final notification, submitted no later than two business days after the end of the reportable Broadcast Station Blackout, will identify the date retransmission resumed for each station included in the initial notification (Final Blackout Notification). In addition, Reporting Entities must correct any material errors in a blackout notice. This information will be collected through an online reporting portal designed, hosted, and administered by the Commission. Reporting Entities will be given notice of the specific reporting procedures by public notice before being required to submit blackout information via the reporting portal. Public blackout information collected through the portal will then be available on the Commission's website.¹⁰⁵

29. To streamline reporting, the Commission will use an online reporting portal, modeled after the Commission's Network Outage Reporting System (NORS), which Reporting Entities will use to report Broadcast Station Blackouts occurring on MVPD platforms.¹⁰⁶ As with NORS, the Commission will provide a file template as necessary to promote the ease of reporting, maintain a list of ongoing and past blackouts, and allow users to easily update information on blackouts. The blackout information to be reported will be available to the public, except for more sensitive information regarding subscriber counts, which will be treated as presumptively confidential. Reporting Entities will not be required to begin reporting until the web portal is functional. More specific submission instructions will be announced by the Media Bureau via public notice at least 30 days before the requirements go into effect.

30. Nothing in the record suggests that it would pose an undue burden for small entities to compile the required information, given that Reporting Entities collect this information in the ordinary course of business for their internal use. Accordingly, we do not believe compliance with the adopted rule will result in significant additional costs or require small Reporting Entities to hire professionals to comply with the new reporting requirements.

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

31. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities ... including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."¹⁰⁷

32. As explained in the *Order*, the blackout reporting rule is necessary to fill a significant information gap for the Commission concerning the extent of Broadcast Station Blackouts occurring across the country.¹⁰⁸ Blackout reporting will also improve the public's access to information about the frequency and duration of Broadcast Station Blackouts occurring across the country. The *Order*

¹⁰⁵ *Supra*, Appendix A—Final Rule.

¹⁰⁶ Federal Communications Commission, *Network Outage Reporting System (NORS)*, <https://www.fcc.gov/network-outage-reporting-system-nors> (last updated Nov. 30, 2023).

¹⁰⁷ 5 U.S.C. § 604(a)(6).

¹⁰⁸ *Order* at paras. 10-17.

considered a number of alternatives and tailors the requirements so that they impose a minimal economic and administrative burden on small and other Reporting Entities while still ensuring that the Commission and the public have access to critical data on service disruptions. For example, the *Order* revises the reporting deadline proposed in the *NPRM* for the Initial Blackout Notification to give small and other Reporting Entities two business days, instead of 48 hours as proposed in the *NPRM*, to file the initial notice with the Commission. We also considered NTCA's comments stating that the reporting requirements would be an unreasonable burden for small entities,¹⁰⁹ but instead agree with small cable operator Skitter, who comments that the reporting obligation is "logical and manageable, even for a small system."¹¹⁰ NAB proposed that small and other MVPDs be required to report successful retransmission consent,¹¹¹ but we find that the benefits of this additional information would not outweigh the burden of compliance for small operators and declined this approach. In reviewing comments on the specificity of subscriber data, we determined that a subscriber estimate would satisfy the Commission's goals, instead of requiring the exact number of subscribers as proposed in the *NPRM*, thereby reducing the reporting burden for small and other providers.¹¹² We also considered proposals to include additional information for the Initial and Final Blackout Notifications, but find that the benefits gained by these added details would not outweigh the burdens.¹¹³

33. We expect the primary burden associated with the proposed reporting requirements would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations, even for small MVPDs, particularly given that an MVPD will be able to report a blackout affecting multiple stations or streams on the same blackout notice.¹¹⁴ As a result, we expect that complying with our proposed reporting requirements would create a minimal administrative burden even for small entities, and that, on balance, the benefits to the public resulting from the information collection would outweigh any potential burden.

G. Report to Congress

34. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹¹⁵ In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.¹¹⁶

¹⁰⁹ Comments of NTCA—The Rural Broadband Association at 3-4.

¹¹⁰ Comments of Skitter, Inc. at 7.

¹¹¹ Reply Comments of the National Association of Broadcasters at 1-4.

¹¹² *Order* at paras. 47-48.

¹¹³ *Id.* at paras. 50-51.

¹¹⁴ *Id.* at paras. 45, 54.

¹¹⁵ 5 U.S.C. § 801(a)(1)(A).

¹¹⁶ *Id.* § 604(b).