

final approval authority for funding of all projects.

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Administrator, Federal Emergency Management Agency.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–195, 11–10; FCC 24–72; FR ID 233875]

Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) codifies the Broadband Data Collection (BDC) challenge process deadline as required by the bipartisan Infrastructure Investment and Jobs Act, delegates authority to the offices and bureaus to conduct BDC audits, and clarifies that providers must submit detailed data to seek restoration for those locations or areas on the National Broadband Map (NBM).

DATES: Effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Will Holloway, Broadband Data Task Force, at William.Holloway@fcc.gov or (202) 418–2334.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Fourth Report and Order in WC Docket Nos. 19–195 and 11–10, released on July 12, 2024. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/fcc-takes-steps-update-broadband-data-collection-processes> or by using the Commission’s EDOCS web page at www.fcc.gov/edocs.

Paperwork Reduction Act. The Fourth Report and Order rulemaking required under the Broadband DATA Act is exempt from review by Office of Management and Budget (OMB) and from the requirements of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. As a result, the Fourth Report and Order will not be submitted to OMB for review under section 3507(d) of the PRA.

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 the Fourth Report and Order and Declaratory Ruling to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). The Commission will submit the draft Fourth Report and Order and Declaratory Ruling to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. 804(2).

Synopsis

A. Codifying the Adjudication Deadlines for Availability Challenges

1. In the Infrastructure Investment and Jobs Act of 2021 (IIJA), Congress amended the Broadband DATA Act to require the Commission to resolve any challenges received as part of the BDC “not later than 90 days after the date on which a final response by a provider to a challenge to the accuracy of a map . . . is complete.” Since the inception of the availability challenge processes, the Commission has followed this deadline. However, in the Fourth Report and Order we take steps to codify this deadline and memorialize the Commission’s challenge processes in the BDC rules.

2. The following paragraphs describe how the Commission has implemented this 90-day deadline for processing fixed and mobile service challenges, and how we will amend our rules to reflect these existing practices and the minor modifications to those practices. For each type of challenge, we indicate the date on which we deem a provider’s response to the challenge to be “final” and “complete” for purposes of triggering the 90-day deadline required by the IIJA. As set forth in the proposed rule published elsewhere in this issue of the **Federal Register**, we tentatively conclude and seek comment on whether this deadline should apply to fixed and mobile availability challenges only, and not to challenges to data in the Fabric.

3. Fixed Service Challenges. For challenges to the accuracy of fixed broadband availability data and coverage maps, the Commission’s rules currently provide that “within 60 days of receiving an alert” to a challenge, “a provider shall reply in the portal by: (i) [a]ccepting the allegation(s) raised by the challenger . . . or (ii) [d]enying the

allegation(s) raised by the challenger, in which case the provider shall provide evidence . . . that the provider serves (or could and is willing to serve) the challenged location.” If the provider accepts the allegations raised by the challenger, the provider must “submit a correction for the challenged location in the online portal within 30 days of its portal reply.” The rules state that a provider’s failure to respond to the challenge within the applicable timeframe “shall result in a finding against the provider.” “If the provider denies the allegation(s) raised by the challenger,” the rules state that “the provider and the challenger shall have 60 days after the provider submits its reply to attempt to resolve the challenge.” The rules further provide that if the parties are unable to reach consensus within 60 days after submission of the provider’s reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal, after which the Commission will review the evidence and make a determination, either: (i) in favor of the challenger, in which case the provider shall update its BDC information within 30 days of the decision; or (ii) in favor of the provider, in which case the location will no longer be subject to the “in dispute/pending resolution” designation on the coverage maps.

4. To codify the requirements of the IIJA, we amend our rules to state that in cases where a fixed broadband provider disputes the allegations raised by the challenger, the response from the provider will be final and complete when the provider reports on the status of its efforts to resolve the challenge, at which time, the 90-day deadline for adjudication of the challenge will begin to run. For example, if a consumer submits a challenge to a fixed provider’s availability data on February 28 and, after initial review, Commission staff accepts the challenge and alerts the provider (via the BDC system) of the challenge on March 1, the service provider would have until April 30 to either concede or dispute the challenge allegations (by submitting an “initial response” to the challenge in the BDC system). If the provider disputes the challenge allegation on April 30, then the parties would have until June 29 to attempt to resolve the challenge and for the service provider to report on the outcome of those discussions by submitting a “final response” to the challenge in the BDC system. This status report is the “final response by [the] provider.” Accordingly, if the provider continues to dispute the challenge in its

final response (*i.e.*, the challenge has not been resolved by the parties), the 90-day deadline will commence once the provider submits its final response. If the provider submits its final response on the deadline of June 29, Commission staff would thus be required to adjudicate the challenge no later than September 27.

5. The only challenges that require FCC adjudication are those that the challenged provider does not concede and for which the challenger and the challenged provider are unable to reach a consensus. We therefore find that the deadline for FCC action most appropriately begins once the provider has submitted its final response reporting on the status of the parties' efforts to resolve a disputed challenge. Starting the 90-day period when a provider reports on the status of the parties' efforts to resolve the challenge, and not earlier, is consistent with the statutory objective that the adjudication period begin "after the date on which a final response by a provider to a challenge to the accuracy of a map . . . is complete." We find that this process will also help the Commission adjudicate challenges efficiently because Commission staff will be able to begin the process of review and adjudication as soon as they have information on the outcome of the dispute resolution process.

6. The process we outline above is largely consistent with current Commission practice; however, we modify the existing process in two respects. First, the 90-day deadline for Commission adjudication of a fixed challenge will begin on the day after the service provider submits the status report, regardless of whether that report is provided on or before the 60th day allowed for under the rules. Our former practice was to begin the 90-day period on the day after the deadline for submission of the status report, even when the challenged provider submits the report prior to the deadline. Based on the Commission's experience adjudicating challenges, this change in our process is appropriate in order to more expeditiously adjudicate fixed challenges when a final status report is filed prior to the end of the full 60-day period. Second, we clarify that when a provider corrects or updates its final response before the end of the 60-day resolution period, the adjudication period will restart upon the date of the recertification of the final response (unless the Commission has already adjudicated the challenge prior to the reversion of the final response).

7. Mobile Service Challenges. The Commission's rules provide that, for

areas with a cognizable challenge to the accuracy of mobile broadband data and coverage maps, "providers either must submit a rebuttal to the challenge within a 60-day period of being notified of the challenge or concede and have the challenged area identified on the mobile coverage map as an area that lacks sufficient service." The rules also provide that "[i]f needed to ensure an adequate review, [Office of Economics and Analytics (OEA)] may also require that the provider submit other data in addition to the data initially submitted" This supplemental data must be submitted within 60 days of OEA's request.

8. We amend our mobile service challenge rules to provide that, when a mobile provider disputes a challenge, the provider's response will be final and complete on the 60th day after the provider is notified of the challenge (*i.e.*, the deadline for submitting challenge rebuttal data). The 90-day adjudication deadline required under the IJA will begin to run on the day after the deadline for submitting the challenge rebuttal data, and this will also apply in cases where a provider responds to a challenge sooner than 60 days after it is notified of the challenge. In cases where Commission staff request supplemental data from a provider after receiving the provider's initial response, the adjudication period will restart the day after the deadline by which the supplemental data is due to the Commission (within 60 days of the request for supplemental data). Initiating the adjudication period the day after the deadline for submitting the challenge rebuttal data, or the day after any supplemental data requested by staff is due, will ensure that the Commission has sufficient information to adjudicate challenges and will create administrative efficiencies by synchronizing the timing for resolving challenges with the monthly notifications we issue to providers regarding the status of challenged areas. We recognize that we are adopting different procedures for calculating the adjudication deadline for mobile availability challenges than for fixed challenges. However, this difference is justified because the data involved in submitting fixed and mobile challenges differ considerably, as do the methodologies for staff review and adjudication of fixed and mobile challenges. Mobile challenges are created through on-the-ground speed test data and, in most cases, mobile service providers respond to challenges using similar on-the-ground speed test data—both of which are submitted into

the BDC system in a structured format. The BDC system performs analyses of these speed test results based upon hexagonal areas, and Commission staff use the results of these analyses to determine whether or not a challenge should be upheld or overturned. In contrast, fixed availability challenges are based upon a variety of Challenge Category Codes, with a large degree of variation in the types of evidence and information submitted both to create a challenge as well as by fixed providers in seeking to overturn challenges. We note that, under the process we adopt in the Fourth Report and Order, mobile challenges will be resolved considerably more quickly in most instances than the time allowed under the deadline due to the methodology used to review and process mobile challenge data. Accordingly, we believe that this different treatment of mobile and fixed challenge review and adjudication is warranted.

B. Audits

9. Background. The Broadband DATA Act requires the Commission to verify the accuracy of the data reported by broadband internet access service providers. The Act also requires that the Commission conduct regular audits of the information submitted by providers in the BDC. Under the Commission's rules, the Commission must "conduct regular audits of the information submitted by providers in their [BDC] filings," which "(1) [m]ay be random, as determined by the Commission; or (2) [c]an be required in cases where there may be patterns of filing incorrect information, as determined by the Commission." In the Second Report and Order (85 FR 50886, August 18, 2020), the Commission determined that it will audit availability data and other information submitted by all types of providers of broadband internet access service (*e.g.*, mobile and terrestrial fixed wireless, fixed wired, and satellite). The Commission further specified that audit tools will include field surveys, investigations, and annual random audits to verify data accuracy, and that audits may additionally be initiated based on an unusual number of crowdsourced complaints.

10. The Commission has implemented its statutory obligations to verify the accuracy of the data reported in biannual BDC submissions in a variety of ways. As an initial matter, the Commission developed an entirely new system for ingesting, validating, and aggregating provider availability data for publication on the NBM. The new BDC system requires all data to be submitted in a structured format according to

rigorous data specifications and imposes comprehensive data-quality checks at the time data is uploaded and submitted into the BDC. These checks identify either “hard” errors that require a correction by the filer prior to certifying and submitting the data, or “soft” flags that alert the filer to a potential anomaly or error and requires an explanation if no change to the data is made. These measures ensure that service providers file higher-quality data.

11. After the close of each biannual BDC filing window, Commission staff conduct verifications of the submitted data to test their accuracy and reliability. These efforts include: review of the “soft” system flags, supporting data submitted in conjunction with availability data, and other filer data to identify potential anomalies or errors; outreach to filers based upon these reviews requesting their correction or explanation of the data; and vetting of subsequent changes to or explanations of the data by providers. Commission staff have performed several thousand data verifications using this process. In addition, Commission staff have initiated formal verification inquiries of the data submitted by certain fixed and mobile broadband providers. In response to such inquiries, providers have been required to submit explanation information relevant to the inquiry, such as network infrastructure data for the targeted verification area.

12. In addition to these verifications, Commission staff have initiated audits of discrete coverage areas within the service availability reported by several mobile service providers. OEA and Wireless Telecommunications Bureau (WTB) staff have conducted these audits in coordination with the Broadband Data Task Force, Enforcement Bureau, Office of Engineering and Technology (OET), and Commission leadership. Commission staff have conducted two variations of mobile audits to date. The first involve on-the-ground testing of mobile service performance in resolution 8 hexagonal cells (“hex areas”) within a single county. Commission staff, in coordination with its third-party contractors, selected the target county to audit and conducted on-the-ground testing based upon a variety of factors, including the number of service providers who claim some amount of network coverage in the county, the number of accessible hex areas in the county, the population density of the county, and the marginal coverage in the area. The second variation of audits involves requests for infrastructure data from service providers for a handful of randomly selected counties. These counties were

selected using several of the factors used to identify areas for on-the-ground testing as well as other factors, such as the geography and topography of the counties.

13. To standardize the types of information the Commission requests through formal verification inquires and the second variation of mobile audits, as well as to provide transparency and certainty to service providers, the Commission has released an updated data specification for provider infrastructure data submitted in the challenge, verification, and audit processes. This data specification sets forth standardized, structured data that all service providers (fixed wireline, terrestrial fixed wireless, mobile wireless, and satellite) should be prepared to submit in response to verification inquiries and audits (as well as in response to challenges in instances where mobile wireless service providers are able to respond to mobile challenges with infrastructure data).

14. Discussion. Notwithstanding the clear mandates in the Broadband DATA Act, the Second Report and Order, and the Commission’s rules that we verify and audit availability data as part of the BDC, we take this opportunity to clarify the procedural mechanics of our audit rules. Accordingly, we begin by formally delegating authority to OEA, in coordination with WTB, the Wireline Competition Bureau (WCB), and the Space Bureau (SB), to continue to perform audits using the processes and data specifications currently available. We also reaffirm the authority of OEA, in coordination with the relevant bureaus and offices, to continue performing fixed and mobile data verifications using existing methods or any other methods and data specifications it may develop in the future for verifying availability data. We direct OEA, in coordination with WTB, WCB, and SB, to establish methodologies and procedures for selecting service providers (either fixed or mobile) and targeted locations or areas subject to random audit, as well as for determining “patterns of filing incorrect information” sufficient to warrant an audit. In the latter case—as well as in the case of verification inquiries—the methodology(ies) will continue to be based on anomalies or inconsistencies in the data a provider submits as part of its biannual submission and/or information submitted through, or behavior demonstrated in, the availability challenge processes or crowdsourcing submissions.

15. This delegation of authority specifically includes the authority to

identify and select specific providers and geographic areas or Broadband Serviceable Locations subject to formal verification or audit. As part of this delegation, OEA is vested with authority to develop processes or procedures for randomly selecting geographic areas or locations to audit, as well as for determining “cases where there may be patterns of filing incorrect information,” consistent with our rules. OEA, in coordination with WTB, WCB, and SB, is best qualified to make individualized determinations of the areas or locations that should be audited (subject to the conditions in § 1.7006(a) outlined above), given its subject-matter expertise in reviewing the underlying availability data and its understanding of resources (e.g., budget, staff time) available to perform audits.

16. We further delegate authority to OEA, in coordination with WTB, WCB, and SB (as appropriate), to collect all data required to conduct a thorough and complete audit, including, but not limited to, the information set forth in the BDC Infrastructure Data Specification, on-the-ground mobile performance data (in the case of audits of mobile coverage areas), and any other data OEA determines are necessary to assess an entity’s claims that it makes service available to audited locations or areas. This authority permits OEA, in coordination with the relevant bureaus and offices, to use third-party contractors to gather and analyze the collected data, subject to the requirement that Commission staff supervise and direct any third-party contractors used to gather or analyze the data.

C. Ministerial Changes

17. The part 1, subpart V rules in title 47 refer to the “Digital Opportunity Data Collection” or “DODC.” This is the name formerly given to the data collection that the Commission now refers to as the Broadband Data Collection or BDC. In the Fourth Report and Order, we make ministerial changes to our rules to replace references to the “Digital Opportunity Data Collection” or “DODC” with references to the Broadband Data Collection or BDC, as appropriate. These rule amendments are exempt from notice-and-comment requirements of the Administrative Procedure Act (APA) because they are procedural rules that “do not themselves alter the rights or interests of parties.” Notice and comment for these rule changes are also unnecessary because the edits are non-substantive and have no impact on regulated parties or the public.

I. Declaratory Ruling

A. Restoration of Locations and Areas Removed Through Availability Challenges, Audits and Verifications

18. We next issue a declaratory ruling clarifying that providers must submit more detailed data in subsequent BDC filings when claiming availability for locations or areas that were previously removed through the challenge, verification or audit processes. In doing so, we specify the types of existing data specifications for demonstrating availability at previously removed locations or areas for certain types of challenges. The Broadband DATA Act required that the Commission adopt rules for “the biannual collection and dissemination of granular data . . . relating to the availability and quality of service with respect to terrestrial fixed, fixed wireless, satellite, and mobile broadband internet access service,” and “processes through which the Commission can verify the accuracy of data” submitted by broadband service providers. The Broadband DATA Act recognizes that, due to ongoing changes in the availability of internet services across the United States and its Territories, the Broadband Data Collection is an iterative process and that the NBM must be updated regularly with refreshed data to reflect the on-the-ground reality of mass-market broadband availability. Providers must therefore report availability data as of June 30 and December 31 of each year, which may include expanded coverage since the provider’s last filing (due, for example, to build-out of additional infrastructure since the previous submission) and, in some cases, reduced coverage (due, for example, to the retirement of discontinued technologies or infrastructure, or to network capacity constraints preventing the connection of new customers).

19. We clarify that in cases where a provider’s claimed availability at a location (in the case of a fixed provider) or in an area (in the case of a mobile provider) is removed from the NBM as the result of a lost or conceded challenge, a verification inquiry, or an audit (together, a “Removed Location or Area”), our rules require the provider to submit updated availability data in a subsequent BDC filing if it can demonstrate that it can make service available to the Removed Location or Area. We interpret the Commission’s rules, as well as our statutory obligation to verify the accuracy of the data displayed on the NBM, to require a restoration process for Removed Locations or Areas in order to ensure that the data on the NBM remain

accurate and to improve the usefulness of the coverage maps. In so doing, we delegate authority to OEA, in coordination with WCB, WTB, OET, and SB, to develop detailed data specifications setting out the categories of information a provider must submit when seeking to restore a previously Removed Location or Area through a subsequent BDC filing.

20. If a provider’s reported availability at a location or in an area is removed from the NBM as the result of a verification, audit, or challenge, a Removed Location or Area is created in the BDC system. The ways in which these Removed Locations or Areas are generated is described below.

21. Verifications and Audits. As discussed above, the Commission has robustly implemented its statutory obligations to verify the accuracy and reliability of broadband availability data that providers submit to the Commission and to audit provider-reported availability data. If, in response to a Commission-initiated verification or audit, a provider is unable to submit sufficient information supporting its reported coverage at a location or area, the verification or audit may lead to a Removed Location or Area, which would include all or part of the area subject to the verification or audit.

22. Service Availability Challenges. The Broadband DATA Act directed the Commission to “establish a user-friendly challenge process through which consumers, State, local, and Tribal governmental entities, and other entities or individuals may submit coverage data to the Commission to challenge the accuracy of” the information on the NBM. In the Third Report and Order (86 FR 18124, April 7, 2021), the Commission adopted rules establishing the fixed availability challenge process, including the procedures the Commission uses to resolve fixed availability challenges. Similarly, the Commission adopted rules for challenges to mobile wireless coverage data based upon lack of service or poor service quality, such as slow delivered speeds.

23. A service availability challenge may result in a Removed Location or Area for several reasons. First, a provider may affirmatively concede a challenge. Second, a provider’s failure to respond to a challenge within the applicable timeframes results in a finding against the provider, thereby leading to an automatic concession. An automatic concession may be (i) intentional, because the provider agrees with the challenger and chooses to allow the challenge to automatically result in a finding against that provider

or (ii) unintentional, due to a missed deadline, a misunderstanding of the BDC processes, or some other act or omission. Finally, a fixed or mobile availability challenge could be adjudicated by the FCC in the challenger’s favor. When a provider concedes or loses a challenge, it must update its availability data to align with the lost or conceded challenge and certify the updated data; the location or area lost or conceded as a result of the challenge process thereby constitutes a Removed Location or Area.

24. Since the launch of the NBM on November 18, 2022, the verification, audit, and challenge processes have been active and have led to meaningful updates to the map. In just the first year following the map’s launch, approximately 3.7 million fixed availability challenges were accepted and submitted to providers for response, resulting in more than 2.5 million updates to the fixed availability data on the NBM. In approximately the same timeframe, 35 cognizable mobile challenges resulted in 18 corrections to mobile wireless coverage data on the NBM. To date, FCC staff have initiated thousands of fixed data verification inquiries, as well as audits, which have resulted in updates to hundreds of provider submissions. These processes are open and ongoing, and new verification efforts, audits, and challenges are regularly initiated and resolved. Meanwhile, significant Federal investments in broadband infrastructure have been either awarded or deployed since the launch of the NBM, which will produce meaningful expansions of broadband availability across the United States and Territories.

25. Given the various ways in which broadband service availability can both expand and contract, it is entirely possible, and in fact, very likely, that a provider who previously reported mass-market broadband internet service available at a Removed Location or Area may subsequently make such service available to the Removed Location or Area. It is critical that the BDC be able to capture these types of developments in broadband availability over time.

B. Legal Authority for Implementing Location Restoration

26. Pursuant to the Act, the BDC captures changes in broadband availability data over time to ensure that the NBM remains accurate. Each BDC filing is a snapshot of broadband availability on a particular date, and each verification, audit, and/or challenge is applicable to availability information at that particular time. However, Removed Locations or Areas

“persist” from one BDC filing to the next, in order to promote active participation in the challenge, verification, and audit processes by service providers and to alleviate the need for challengers and the Commission to repeatedly correct previously adjudicated locations or areas. Therefore, it is essential that providers submit updated data into the BDC for Removed Locations and Areas, and that the BDC provide an efficient, standardized way for the NBM to reflect where a provider reports in a subsequent filing that it can make service available at a previously Removed Location or Area. Without such a requirement or pathway to restore Removed Locations or Areas, the NBM would become outdated, and therefore less accurate—contrary to both Congress’s and the Commission’s intent.

27. Accordingly, we clarify that the requirement that BDC “filings shall be made each year on or before March 1 (reporting data as of December 31 of the prior year) and September 1 (reporting data as of June 30 of the current year)” includes an obligation that providers submit data on service availability to Removed Locations or Areas. Because the BDC rules require providers to report their broadband availability data accurately for each filing round and certify that those filings are accurate, it would be a violation of the Commission’s rules for a provider to not report coverage at a Removed Location or Area where it now makes service available.

28. Requiring updates based upon changed circumstances is consistent with our statutory obligation to “establish . . . processes through which the Commission can verify the accuracy of the data submitted” by service providers in the BDC. This includes a process for verifying data submitted through the challenge process “in order to ensure the reliability of that data.” The Broadband DATA Act cannot hold its intended purpose if a service provider is not required to and does not have a pathway for reporting service availability to a location that, though previously unserved, is now capable of receiving the reported service. Clarifying this requirement, and establishing a pathway for restoring a previously Removed Location or Area improves the usefulness of the coverage maps by ensuring that the data on the NBM are timely and accurate. As noted by CTIA—The Wireless Association, where a provider has completed new deployments, service upgrades, or otherwise added more capacity to its network, the BDC must allow that provider to include those locations in a

subsequent filing; without such a mechanism to restore these locations, the NBM would be underinclusive and could cause confusion for consumers.

29. Moreover, clarifying this requirement and establishing a pathway for reporting Removed Locations or Areas is consistent with prior Commission direction in the context of mobile wireless coverage data submissions. The Commission previously contemplated that changed circumstances could lead to improved coverage at an area previously lost by a mobile wireless provider in the mobile challenge process. In the Third Report and Order, the Commission stated that if a mobile provider “that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.” While the Commission did not include similar language regarding fixed challenges, the rationale applies equally to both types of broadband services: if a provider lost or conceded a challenge but the provider is now able to produce additional evidence supporting its claim that it can make broadband service available at the previously Removed Location or Area, the BDC must implement a pathway to restoration.

30. We make clear that the obligation to submit updated data in subsequent filings extends to locations and areas that were removed because the provider previously failed to participate in the challenge processes or provided insufficient evidence in response to the challenge. For example, where a provider automatically conceded a challenge due to a misunderstanding of our rules or the BDC system, it is possible that the provider actually made service available at the resulting Removed Location or Area at the time the challenge was submitted. Similarly, because FCC adjudications are limited to the evidence submitted by the challenger and the provider, a challenge could be upheld due to insufficient evidence submitted by the provider in response to the challenge, even if the provider actually makes service available at the Removed Locations or Areas. In all of these instances, in order for the NBM to accurately reflect, on an ongoing basis, the broadband services that are available at each location or area, we must require providers to submit updated data and establish a pathway for restoring a Removed Location or Area.

C. Data Requirements for Restoration

31. In order to preserve the integrity of the challenge processes, including our obligation under the Broadband DATA Act to “mitigate the time and expense incurred by, and the administrative burdens placed on, entities and individuals” in our challenge processes, providers must submit data to support a request in a subsequent availability filing to include a Removed Location or Area. Further, a data requirement mitigates the administrative burdens on the Commission to conduct verifications and audits of data submitted by providers at Removed Locations or Areas in subsequent filings.

32. Specifically, a provider must submit detailed information demonstrating that it can now make service available at the Removed Location or Area. The data elements included in the Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes are indicative of the kind of information that we expect to be persuasive in the restoration of locations or areas removed from the NBM as a result of the challenge process, verification inquiries or audits, where infrastructure data would be relevant. Providers are already familiar with these existing data specifications, and for the most part already retain this information. Specifically, fixed provider infrastructure data would be relevant for consumer and bulk fixed availability challenges lost under Challenge Category Codes 4, 5, 6, 8, or 9, and bulk fixed availability challenges lost under Challenge Category Codes 1 or 2. Additionally, mobile provider infrastructure data would be informative when providers seek to restore coverage areas lost in the mobile challenge process as well as removed in response to verification inquiries or audits. While these existing data specifications are persuasive for restoration of locations and areas previously removed based on the above-referenced challenge codes, these data are not relevant to all challenge codes. Further, these data specifications do not include speed test data for mobile service. We, therefore, seek comment, in the proposed rule published elsewhere in this issue of the **Federal Register**, on what information commenters believe would be persuasive in the restoration of fixed availability data removed from the NBM under the remaining Challenge Category Codes, as well as the potential use of on-the-ground speed test data for restoration of mobile coverage areas.

33. We additionally clarify that the data requirements for restoring a provider's availability to a previously Removed Location or Area are distinct from the rules and standards governing availability challenges. A provider's restored availability information can be subsequently challenged in accordance with rule § 1.7006(d) (for fixed availability data) and (e) and (f) (for mobile availability data).

34. We direct OEA, in consultation with WCB, WTB, OET, and SB, to develop and publish data specifications detailing the information a provider must submit when seeking to restore a previously Removed Location or Area through a subsequent BDC filing—starting with the infrastructure data included in the Data Specifications for Provider Infrastructure Data in the Challenge, Verification, and Audit Processes. We also direct OEA, in consultation with the other named bureaus and offices, to make the necessary system changes to implement the clarifications in the Declaratory Ruling. After the data specifications are published, a provider may upload the specific information necessary to restore a Removed Location or Area in the BDC system. Where Commission staff deems that information sufficient to demonstrate availability, the location or area will be restored on the National Broadband Map.

II. Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program, Digital Opportunity Data Collection Third Further Notice of Proposed Rulemaking (Third FNPRM) released in July 2020 (85 FR 50911, August 18, 2020). The Federal Communications Commission (Commission) sought written public comment on the proposals in the Third FNPRM, including comments on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

36. In the Fourth Report and Order, the Commission takes steps to adopt certain requirements mandated by the Broadband DATA Act, as well as adopting improvements to the data collection. Specifically, the Fourth Report and Order modifies the Broadband Data Collection (BDC) rules to codify expedited challenge

adjudication deadlines as required by the Infrastructure Investment and Jobs Act (IIJA), such as a 90-day deadline for fixed services challenges, as well as provide a specific delegation of authority to the Office of Economics and Analytics (OEA), in coordination with certain other bureaus and offices, to conduct audits of broadband data submitted by providers (as required under the Broadband DATA Act). Through the adoption of these rules, the Commission is implementing targeted changes that further address its long-standing objective of working towards closing the digital divide by improving the processes for filers, some of whom consist of small entities.

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

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

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

38. 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 proposed rules as a result of those comments. The Chief Counsel did not file 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

39. 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁴⁰ 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.

40. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We

therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

41. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

42. Broadband internet Access Service Providers. The broadband internet access service provider industry has changed since the definition was introduced in 2007. The data cited below may therefore include entities that no longer provide broadband internet access service and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband internet access

service. We note that, although we have no specific information on the number of small entities that provide broadband internet access service over unlicensed spectrum, we included these entities in our Initial Regulatory Flexibility Analysis.

43. Wired Broadband internet Access Service Providers (Wired ISPs). Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

44. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 Communications Marketplace Report, we believe that the majority of wireline internet access service providers can be considered small entities.

45. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as Voice over internet Protocol (VoIP) service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had

revenue of less than \$25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

46. Wireline Providers.

47. 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. 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. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

48. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. 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. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

49. Local Exchange Carriers (LECs). 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 both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies

firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. 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 fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

50. 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. Wired Telecommunications Carriers is the closest industry with an 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. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. 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. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. 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.

51. 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. Wired Telecommunications Carriers is the closest industry with an 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. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250

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

52. Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an 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. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

53. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all

of these providers can be considered small entities.

54. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an 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. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

55. Wireless Providers—Fixed and Mobile.

56. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

57. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services

using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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

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

60. 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.

61. 1670–1675 MHz Services. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

62. According to Commission data as of November 2021, there were three active licenses in this service. The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a "small business" is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

63. 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.

64. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

65. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

66. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the

auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

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

68. Specialized Mobile Radio Licenses. Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard,

these 119 SMR licensees can be considered small entities.

69. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR 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. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

70. Lower 700 MHz Band Licenses. The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including frequency division duplex (FDD)- and time division duplex (TDD)-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

71. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for

the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

72. 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.

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

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

75. 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.

76. 700 MHz Guard Band Licensees. The 700 MHz Guard Band encompasses spectrum in 746–747/776–777 MHz and 762–764/792–794 MHz frequency bands. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

77. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses. The Commission's small business size standards with respect to 700 MHz Guard Band

licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses. None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.

78. 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.

79. Air-Ground Radiotelephone Service. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.*, voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

80. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the

entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

81. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. The Commission’s small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

82. 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, the Commission does not collect data on the number of employees for licensees providing these services therefore, 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.

83. Advanced Wireless Services (AWS)—(1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3); 2000–2020 MHz and 2180–2200 MHz (AWS–4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer

employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

84. According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses. The Commission’s small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

85. 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.

86. 3650–3700 MHz band. Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3650–3700 MHz band fall in the Wireless Telecommunications Carriers (except Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for

2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

87. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band. However, 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.

88. Fixed Microwave Services. Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an 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. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

89. 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.

90. 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.

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

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

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

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

94. 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. 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.

95. Satellite Service Providers.

96. Satellite Telecommunications. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

97. All Other Telecommunications. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the

majority of "All Other Telecommunications" firms can be considered small.

98. Cable Service Providers.

99. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

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

101. 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. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (heads) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

102. 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." 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. Based on industry data, only six cable system operators have more than 498,000 subscribers. 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. 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.

103. All Other Telecommunications.

104. Electric Power Generators, Transmitters, and Distributors. The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.

105. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation,

Transmission, and Distribution industry there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

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

106. We expect that some of the rules adopted in the Fourth Report and Order will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. The Fourth Report and Order modifies the BDC rules to codify the expedited availability challenge adjudication deadlines to implement the IIJA mandate.

Commission staff already functionally implemented this deadline for the availability challenge process as required by the IIJA. In an effort to comply with the Broadband DATA Act, we now memorialize in our rules the procedures that Commission staff have followed since the start of the challenge process. The Fourth Report and Order also delegates authority to OEA to collect any and all data required to conduct a thorough and complete audit process. Finally, we formally amend the name given to the data collection from the “Digital Opportunity Data Collection” to the “Broadband Data Collection.” As to the cost of compliance, at present, the record contains insufficient information to either quantify compliance costs for small entities as a result of the adopted rules, or determine whether there will be a need for small entities to hire attorneys, engineers, consultants, or other professionals.

107. The Commission believes that any additional burdens imposed by our audit of provider data are outweighed by the significant benefit to be gained from more precise broadband deployment data. As discussed above, although the Commission cannot quantify the cost of compliance with the requirements in the Fourth Report and Order, we believe the modifications to the BDC rules are necessary to comply with the Broadband DATA Act and complete accurate broadband coverage maps.

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

108. 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.”

109. The Commission’s actions in the Fourth Report and Order are primarily in response to the legislative enactment of the Broadband DATA Act to develop better quality, more useful, and more granular broadband deployment data, as well as our mandate to codify expedited challenge adjudication deadlines as required by the IIJA. In considering the comments in the record, we were mindful of the time, money, and resources that some small entities incur to complete these requirements.

110. For example, in implementing the IIJA’s requirements, we considered alternatives for how the Commission could address situations where a challenger and a challenged provider cannot reach a consensus as § 1.7006(d)(6) requires. In the Fourth Report and Order, we set forth that the shot-clock for Commission action should begin once the provider has reported on the status of the parties’ efforts to resolve the challenge. Taking this step allows small and other entities to have sufficient time to resolve challenges on their own, where possible, before Commission staff become involved while helping the Commission adjudicate challenges more efficiently.

G. Report to Congress

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

III. Ordering Clauses

112. Accordingly, *it is ordered*, pursuant to sections 1 through 4, 7, 201, 254, 301, 303, 309, 319, 332, 403, and 641 through 646 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 157, 201, 254, 301, 303, 309, 319, 332, 403, 641 through 646, the Fourth Report and Order and Declaratory Ruling *is adopted*.

113. *It is further ordered* that part 1 of the Commission’s rules *is amended* as set forth in Appendix A of the Fourth Report and Order.

114. *It is further ordered* that the Fourth Report and Order *shall be* effective 30 days after publication in the **Federal Register**.

115. *It is further ordered* that the Declaratory Ruling *shall be* effective upon adoption by the Commission.

116. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of the Fourth Report and Order and Declaratory Ruling 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).

117. *It is further ordered* that the Office of the Secretary *shall send* a copy of the Fourth Report and Order, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Broadband, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission
Marlene Dortch,
Secretary.

FEDERAL COMMUNICATIONS COMMISSION

Final Rules

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

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

- 2. Amend § 1.7006 by:
 - a. Revising paragraph (a) and paragraph (d)(6) introductory text;
 - b. Redesignating paragraphs (e)(5) through (7) as paragraphs (e)(6) through (8);
 - c. Adding a new paragraph (e)(5);
 - d. Redesignating paragraphs (f)(6) and (7) as paragraphs (f)(7) and (8); and
 - e. Adding a new paragraph (f)(6).

The revisions and additions read as follows:

§ 1.7006 Data verification.

(a) *Audits.* The Office of Economics and Analytics, in coordination with the Wireless Telecommunications Bureau, Wireline Competition Bureau, and

Space Bureau, shall conduct regular audits of the information submitted by providers in their Broadband Data Collection filings. The audits:

- (1) May be random, as determined by the Office of Economics and Analytics;
- or
- (2) Can be required in cases where there may be patterns of filing incorrect information, as determined by the Office of Economics and Analytics.

* * * * *

(d) * * *

(6) If the parties are unable to reach consensus within 60 days after submission of the provider's reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal. After the affected provider reports on the status of these efforts (including any amended report submitted prior to the 60-day deadline), the Commission shall have 90 days to review the evidence and make a determination, either:

* * * * *

(e) * * *

(5) Commission staff will resolve the challenge within 90 days following the 60th day after which the provider is notified of the challenge (i.e., the deadline for submitting challenge rebuttal data), except that, should the Office of Economics and Analytics (OEA) request supplemental information from a provider after receiving the provider's initial challenge response, the Commission will resolve the challenge within 90 days following the 60th day after which staff request such supplemental data (i.e., 90 days after the deadline for when the supplemental data is due to OEA).

* * * * *

(f) * * *

(6) Commission staff will resolve the challenge within 90 days following the 60th day after which the provider is notified of the challenge (i.e., the deadline for submitting challenge rebuttal data), except that, should the OEA request supplemental information from a provider after receiving the provider's initial challenge response, the Commission will resolve the challenge within 90 days following the 60th day after which staff request such supplemental data (i.e., 90 days after the deadline for when the supplemental data is due to OEA).

* * * * *

§§ 1.7004 through 1.7010 [Amended]

■ 3. In addition to the amendments set forth above, in 47 CFR part 1, remove the text “Digital Opportunity Data Collection” wherever it appears and add in its place the text “Broadband Data

Collection” in §§ 1.7004 through 1.70010.

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BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 12-108; FCC 24-79; FR ID 235228]

Accessibility of User Interfaces, and Video Programming Guides and Menus

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) requires manufacturers of covered apparatus and multichannel video programming distributors to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing. This action will further the Commission's efforts to enable individuals with disabilities to access video programming through closed captioning.

DATES:

Effective date: Effective September 16, 2024.

Compliance date: Compliance with 47 CFR 79.103(e) is not required until the Commission has published a document in the Federal Register announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order (Order), in MB Docket No. 12-108; FCC 24-79, adopted on July 18, 2024 and released on July 19, 2024. The full text of this document will be available at https://docs.fcc.gov/public/attachments/FCC-24-79A1.pdf and via ECFS at https://www.fcc.gov/ecfs/. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), 1-844-4-FCC-ASL (1-844-432-2275) (videophone).

Synopsis

This Order furthers our efforts to enable individuals with disabilities to access video programming through closed captioning. Closed captioning displays the audio portion of a television program as text on the screen, providing access to news, entertainment, and information for individuals who are deaf and hard of hearing. The Federal Communications Commission requires the provision of closed captioning on nearly all television programming, as well as on a large portion of internet protocol (IP)-delivered programming. Through the Commission's implementation of the Television Decoder Circuitry Act of 1990 (TDCA) and the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), it has made significant progress in enabling video programming to be accessible to persons who are deaf and hard of hearing. Pursuant to the TDCA, the Commission adopted standards for the display of closed captions on digital television receivers, and those standards enable users to customize caption display by changing the font, size, color, and other features of captions. Subsequently, pursuant to the CVAA, the Commission adopted display standards for other video devices, specifically for apparatus designed to receive or play back video programming transmitted simultaneously with sound. However, many consumers continue to have difficulty accessing the closed captioning display settings on televisions and other video devices—a technical barrier that prevents the use and enjoyment of captioning. Today we take steps to alleviate this problem and thereby ensure meaningful access to captioning.

Specifically, the rule we adopt requires manufacturers of covered apparatus¹ and multichannel video programming distributors (MVPDs) to make closed captioning display settings readily accessible to individuals who are deaf and hard of hearing. We afford covered entities flexibility in how they meet this obligation, and the Commission will determine whether settings are readily accessible to consumers by evaluating the following factors: proximity, discoverability,

¹ As discussed below, the requirements adopted herein apply to devices covered by section 303(u) of the Act, in other words, apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size, except that the requirements do not apply to third-party, pre-installed applications that are otherwise covered by section 303(u).