

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

In the Matter of)
Travelers Information Stations;) PS Docket No. 09-19
American Association of Information Radio)
Operators Petition for Ruling on Travelers')
Information Station Rules;)
Highway Information Systems, Inc. Petition for) RM-11514
Rulemaking;)
American Association of State Highway and) RM-11531
Transportation Officials Petition for Rulemaking)

ORDER AND NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we solicit comment on whether to modify the existing rules governing the licensing and operation of Travelers' Information Stations (TIS) to expand the scope of permitted operations.¹ Since the inception of TIS in 1977, the Commission has authorized TIS operations to permit Public Safety Pool eligible entities to transmit noncommercial travel-related information to motorists on a localized basis.² However, certain parties and licensees have sought to expand the scope of TIS operations in order to transmit more general alerts and public safety-related information to the public, including non-motorists. By initiating this proceeding, we grant petitions for rulemaking filed by Highway Information Systems, Inc. (HIS) and the American Associations of State Highway and Transportation Officials (AASHTO) requesting the commencement of a proceeding to amend the TIS rules. We deny the petition for declaratory ruling regarding TIS filed by the American Association of Information Radio Operators (AAIRO), but incorporate the issues raised in AAIRO's petition into this rulemaking proceeding.

II. BACKGROUND

2. The Commission promulgated TIS operations in 1977 in order to "establish an efficient means of communicating certain kinds of information to travelers over low power radio transmitters licensed to Local Government entities."³ The Commission specifically noted that such stations had been used to reduce traffic congestion and to transmit "road conditions, travel restrictions, and weather forecasts to motorists."⁴ Further, the Commission anticipated that such stations also would be used to "transmit travel related emergency messages concerning natural disasters (e.g., forest fires, floods, etc.), traffic accidents and hazards, and related bulletins affecting the immediate welfare of citizens."⁵

3. Commercial broadcasters opposed the creation of TIS, claiming that it would duplicate information provided by commercial broadcasts, including "comprehensive weather reports, reports of traffic conditions, names of gasoline stations, restaurants, and lodging conveyed through advertising."⁶ The broadcasters worried that this would siphon off advertising revenues.⁷ Other licensees averred that TIS operations would cause impermissible interference with their operations.⁸

4. To address these concerns, the Commission prohibited TIS operators from transmitting "commercial" messages and emphasized that strict limits would be placed on other operational aspects of TIS licenses, including authorized power levels. Regarding the former, the Commission stated that: "No commercial operation of these stations is intended or permitted."⁹ The Commission also adopted power

¹ See 47 C.F.R. § 90.242(a)(3).

² See Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, *Report and Order*, 67 F.C.C.2d 917 (1977) (*TIS Report and Order*).

³ *Id.* at 917 ¶ 1.

⁴ *Id.* at 921 ¶ 15.

⁵ *Id.* at 922 ¶ 16.

⁶ *Id.* at 918 ¶ 5.

⁷ *Id.* at 919 ¶ 9.

⁸ *Id.* at 924 ¶ 24.

⁹ *Id.* at 917 ¶ 1.

and transmitter coverage limitations to ensure that TIS operations typically would be confined to the immediate vicinity of specified, travel-related areas.¹⁰ The Commission imposed this transmitter location restriction with the objective of limiting service to “the traveler in the immediate vicinity of the station.”¹¹ Although the Commission did not preclude TIS operations from multiple transmitters, each TIS site is expected to provide specifically targeted information restricted to the immediate vicinity of certain areas specified by the rules. Multiple TIS site operations working on a network concept would not be allowed.¹² Additionally, TIS licensees operate predominantly on a secondary basis, and their operations may “be suspended, modified, or withdrawn by the Commission without prior notice or right to hearing if necessary to resolve interference conflicts.”¹³

5. TIS stations are authorized on a primary basis on 530 kHz and on a secondary basis in the 535-1705 kHz band, all of which is receivable with an AM radio.¹⁴ TIS operates on a low power basis: maximum output power is 50 watts with a cable antenna and 10 watts with a traditional radiating antenna.¹⁵ TIS stations may only transmit “noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest.”¹⁶ Finally, TIS transmitting sites are restricted to “the immediate vicinity of ... [a]ir, train, and bus transportation terminals, public parks and historical sites, bridges, tunnels, and any intersection of a Federal Interstate Highway with any other Interstate, Federal, State, or local highway.”¹⁷

6. The Commission has not undertaken a major amendment of the TIS rules since their inception. However, in an effort to address apparent operational limitations imposed by the current TIS rules, a few TIS operators have acted on their own accord to expand the scope of TIS content and operations. This has resulted in at least one Commission enforcement action.¹⁸ Other TIS operators and their sponsors have sought to expand the scope of TIS operations through rule waiver requests.¹⁹ In this

¹⁰ See 47 C.F.R. § 90.242(a)(5). See also 47 C.F.R. § 90.242(b)(4) (limiting output power and the field strength of the emission on the operating frequency).

¹¹ *TIS Report and Order*, 67 FCC 2d at 923 ¶ 23.

¹² *Id.* at 923 ¶ 20. See also *Id.* at 923-24 ¶ 23 (“[I]n instituting this rule we are specifically precluding an applicant from setting up a ‘network,’ or ‘ribbon’ of transmitting stations along a highway for the purpose of continuously attracting a motorist with what could be superfluous information.”).

¹³ 47 C.F.R. § 90.242(1)(4).

¹⁴ 47 C.F.R. § 90.242(a)(3).

¹⁵ 47 C.F.R. § 90.242(b)(3)(ii); 47 C.F.R. § 90.242(b)(4)(iii).

¹⁶ 47 C.F.R. § 90.242(a)(7).

¹⁷ 47 C.F.R. § 90.242(a)(5).

¹⁸ See, e.g., City of Santa Monica Licensee of Radio Station WQGR42, File No. EB-07-LA-216, *Notice of Violation* (Jul. 12, 2007) (*Santa Monica Violation Notice*) (retransmission of NOAA weather broadcasts).

¹⁹ See, e.g., Howard County, Maryland, File No. 0003163756, *Order*, 24 FCC Rcd 1566 (PSHSB 2009) (granting waiver to add two sites with expanded coverage contours) (*Howard County Order*); Letter, Dana Shaffer, Chief, Policy Division, to Thomas Hall, Engineering Manager, Highway Information Systems, 22 FCC Rcd 12816 (PSHSB 2007) (denying waiver to Edgecombe County Emergency Management, North Carolina to increase authorized power); County of Arlington, Virginia, File Nos. 0002108062, 0002822293, *Order*, 22 FCC Rcd 4192 (PSHSB 2007) (*Arlington County 2007 Order*) (granting waiver to communicate over expanded area during emergencies); California Department of Transportation Request for Waiver of Section 90.242(a)(7) of the Commission’s Rules, (continued....)

proceeding, we consider the petitions filed by HIS, AAIRO, and AASHTO that seek rule changes or clarification of the scope of the Commission's current TIS rules.

7. On July 16, 2008, HIS filed a petition for rulemaking (HIS Petition) to amend the TIS rules.²⁰ The HIS Petition requests that the Commission: (1) re-title TIS as the "Local Government Radio Service;"²¹ (2) expand the permissible use rule in Section 90.242(a)(7) to "provide that stations in the local government radio service may be used to broadcast information of a non-commercial nature as determined by the government entity licensed to operate the station and other government entities with which the licensee cooperates;"²² and (3) "eliminate the limitation on the sites for local government radio stations that confines such stations to areas near roads, highways and public transportation terminals."²³

8. On September 9, 2008, AAIRO filed a petition for declaratory ruling (AAIRO Petition).²⁴ The AAIRO Petition asks for (1) a "[r]uling that any message concerning the safety of life or protection of property that may affect any traveler or any individual in transit or soon to be in transit, may be transmitted on Travelers' Information Stations, at the sole discretion of officials authorized to operate such stations;" and (2) "a clear directive that such messages, by definition, are expressly included in the permissible content categories defined by 47 C.F.R. Sec. 90.242(a)(7)."²⁵ In its petition, AAIRO states that such a declaration would allow the broadcast of a wide range of information over TIS, including NOAA Weather Radio retransmissions, AMBER Alerts, alternate phone numbers when local 911 systems fail, terror threat alert levels,²⁶ public health warnings "and all manner of civil defense announcement."²⁷ AAIRO, however, does not seek any expansion of TIS operational limitations currently imposed by the Commission's rules.

9. On March 16, 2009, AASHTO filed a petition for rulemaking seeking revision of the TIS rules to permit the transmission of AMBER Alerts and information regarding the availability of 511 services.²⁸

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Order, 22 FCC Rcd 1824 (PSHSB 2007) (denying waiver to use TIS to broadcast energy conservation information); County of Arlington, Virginia, File No. 0002108062, *Order*, 20 FCC Rcd 14785 (WTB 2005) (denying waiver to increase authorized power); Los Angeles World Airports, File No. 0001187565, *Order*, 19 FCC Rcd 4117 (WTB 2004) (granting waiver to increase authorized power).

²⁰ Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules of Highway Information Systems, Inc. (filed July 16, 2008) (HIS Petition).

²¹ HIS Petition at 9.

²² *Id.* at 10.

²³ *Id.*

²⁴ Travelers' Information Service Provision of Localized Public Safety and Emergency Information Pursuant to 47 C.F.R. Sections 90.242 and 90.407, Petition for Ruling (filed Sep. 9, 2008) (AAIRO Petition).

²⁵ *Id.* at 1.

²⁶ *Id.* at 3.

²⁷ *Id.* at 4.

²⁸ See Petition for Rule Making of the American Association of State Highway and Transportation Officials (filed March 16, 2009) at 1 (AASHTO Petition). "511" is a nationwide telephone number for traveler information. See U.S. Department of Transportation, Federal Highway Administration, "America's Traveler Information Telephone Number - What Is It?" available at <http://www.fhwa.dot.gov/trafficinfo/511what.htm>.

10. On February 13, 2009, the Public Safety and Homeland Security Bureau (Bureau) released a public notice seeking comment on the HIS and AAIRO Petitions.²⁹ The comment period on those petitions closed on March 30, 2009, with 61 comments received.³⁰ On April 23, 2009, the Bureau released a public notice seeking comment on the AASHTO Petition.³¹ The comment period on that petition closed on June 8, 2009, with 11 comments received.³²

III. ORDER

11. We first address the AAIRO petition for declaratory ruling. As noted above, AAIRO seeks (1) a “[r]uling that any message concerning the safety of life or protection of property that may affect any traveler or any individual in transit or soon to be in transit, may be transmitted on Travelers’ Information Stations, at the sole discretion of officials authorized to operate such stations;” and (2) “a clear directive that such messages, by definition, are expressly included in the permissible content categories defined by 47 C.F.R. Sec. 90.242(a)(7).”³³ Under AAIRO’s proposed interpretation the current TIS rules would allow the broadcast of a wide range of information over TIS, including NOAA Weather Radio retransmissions, AMBER Alerts, alternate phone numbers when local 911 systems fail, terror threat alert levels,³⁴ public health warnings, and other civil defense announcements.³⁵

12. We conclude that a declaratory ruling is not the appropriate vehicle to decide the issues raised by AAIRO, and we therefore deny the AAIRO Petition. Pursuant to Section 1.2 of the Commission’s rules, the Commission may issue a declaratory ruling for purposes of “terminating a controversy or removing uncertainty.”³⁶ However, a declaratory ruling may not be used to substantively change a policy.³⁷ Section 90.242(a)(7) states that TIS stations may only transmit “noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest.”³⁸ We conclude that accepting AAIRO’s proposed interpretation of the current rules would expand the scope of permitted communications so significantly as to constitute a change in policy. While some of the types of

²⁹ Public Safety and Homeland Security Bureau Seeks Comment on the Petition for Rulemaking of Highway Information Systems, Inc. to Revise and Update the Traveler’s Information Station Rules and on the Petition of the American Association of Information Radio Operators for Ruling on Travelers’ Information Station Rules, RM-11514, PS Docket No. 09-19, *Public Notice*, 24 FCC Rcd 1562 (PSHSB PD 2009).

³⁰ *Id.* at 1.

³¹ Public Safety and Homeland Security Bureau Seeks Comment on the Petition for Rulemaking of the American Association of State Highway and Transportation Officials, RM-11531, *Public Notice*, 24 FCC Rcd 4870 (PSHSB PD 2009).

³² *Id.* at 1.

³³ AAIRO Petition at 1.

³⁴ *Id.* at 3.

³⁵ *Id.* at 4.

³⁶ 47 C.F.R. § 1.2 (incorporating declaratory ruling provision of the Administrative Procedure Act, 5 U.S.C. § 554(e)).

³⁷ See *U.S. Telecom Association v. FCC*, 400 F.3d 29, 35 (D.C. Cir 2005) (“fidelity to the rulemaking requirements of the APA bars courts from permitting agencies to avoid those requirements by calling a substantive regulatory change an interpretative rule.”).

³⁸ *Id.*

communications AAIRO cites could arguably fall within the scope of the existing rules, other examples cited in the petition – such as NOAA transmissions, alternate phone numbers to 911, terror threat alert levels, and public health warnings – do not appear to be “travel related” as contemplated by the plain language of the TIS rules. Indeed, the Commission previously issued a notice of violation for retransmission of NOAA broadcasts over a TIS transmitter.³⁹

13. For these reasons, we deny AAIRO’s petition. AAIRO’s petition, however, raises matters that are relevant to the general thrust of this proceeding to consider expanding the travel-related scope of the TIS rules. In fact, these issues overlap with issues raised by the HIS and AASHTO petitions concerning possible changes to the scope of information content transmitted by TIS. Accordingly, we find that it is in the public interest to address the issues raised by the AAIRO Petition and, on our own motion, we do so as part of the Notice of Proposed Rulemaking below.

IV. NOTICE OF PROPOSED RULEMAKING

14. In this Notice, we seek to determine whether expansion of the content and location restrictions in the TIS rules would create significant public benefit. To varying degrees, AAIRO, HIS, and AASHTO all contend that conditions have sufficiently changed since the Commission promulgated the TIS rules in 1977 that some expansion of the rules would be in the public interest. However, the changes proposed by the three organizations differ from one another in scope. We therefore seek comment on the specific changes to the TIS rules proposed by each petitioner, and on the overall approach that the Commission should take. Should the Commission significantly expand the scope of permitted communications and alerts by local governments on TIS stations, or should it adopt more limited changes that are consistent with the traditional travel-related focus of TIS?

A. Issues Raised by the AAIRO Petition

15. Initially, we seek comment on AAIRO’s suggestion that the Commission should allow TIS stations to broadcast information including NOAA Weather Radio retransmissions, AMBER Alerts, alternate phone numbers when local 911 systems fail, terror threat alert levels,⁴⁰ public health warnings, and civil defense announcements.⁴¹ Many commenters, most of them emergency managers and first responders, supported the AAIRO petition.⁴² Many of these commenters also indicate their desire to

³⁹ See *Santa Monica Violation Notice*.

⁴⁰ AAIRO Petition at 3.

⁴¹ *Id.* at 4.

⁴² See, e.g., Goochland County Comments at 2; Hatfield and Dawson Comments at 1 (the AAIRO petition requests “unobjectionable modification of the operating authority of Travelers’ Information Stations (“TIS”), if indeed it is even necessary.”); Local Government Licensees Comments at 1 (“the AAIRO request is a useful and reasonable clarification of the existing rule at Section 90.242(a)(7).” See also Washoe County District Health Dept. (four separate submissions); Dickinson Police Dept., Dickinson, TX; Galveston County Office of Emergency Management, Dickinson, TX; Charles Suderman, City Councilman, Dickinson, Texas; City of Battle Creek Emergency Services; San Marcos Pass Volunteer Fire Department; James Cooper, Wharton, TX; Midway International Airport Standard Parking, Chicago, IL; Fort Bend County Sheriff’s Office; Warren Graef, Stafford, TX; Midland Emergency Mgmt; Missouri City Fire & Rescue Services; Jasper Newton Sabine Counties Emergency Management; Fort Bend County Health and Human Services; Stafford Municipal School District; Fort Bend County Emergency Mgmt; E. “Skip” Gross, Berry Creek Radio Operator & Engineer; Richard K. Phoenix, RMC, North Plainfield, NJ; Tom Osborne, Redmond FD, Redmond, WA; Irvine Police Department; Director of Communications, Weston, FL; Mark Rubin, Councilman & OEM Coordinator, Rumson, NJ; Emergency Manager, UCLA; Oregon State Marine Board; Lake County Div. of Transp; KSSU, Sacramento, CA; International Association of Emergency Managers; Lt. Robert K. Richardson, Irvine, CA; Tampa International Airport; Vail Public Safety Communications; (continued....)

utilize TIS transmitters for the uses suggested by AAIRO, as well as a number of other uses.⁴³ We seek comment on expanding the scope of the TIS rules to allow a broader array of government information and alerts. Should the Commission identify specific services, such as AMBER Alerts and NOAA weather broadcasts, in the TIS services rules? What limits, if any, should we place on information allowed to be transmitted over TIS?

16. We also seek comment on whether expansion of the TIS rules as proposed by AAIRO would have any adverse effect on commercial broadcasting. AAIRO states that allowing the uses it proposes will not lead to any competition with commercial broadcasters.⁴⁴ NAB, however, opposes the uses proposed by AAIRO, stating that the AAIRO petition does “not provide sufficient evidence to justify approval of their requests for a fundamental transformation of [TIS] operations.”⁴⁵

17. AASHTO also raises concerns about expanding the scope of information transmitted over TIS. AASHTO notes that since the original TIS rules were adopted in 1977, “there has been an explosion in the amount of information to which travelers may have access,” and proposes that the Commission should re-focus the type of information that should be permitted on TIS stations to include information intended to promote situational awareness⁴⁶

18. AASHTO also asserts that routine rebroadcast of NOAA weather information would “have a severe affect on the [TIS] service’s ability to carry official urgent information in the event of an emergency.”⁴⁷ AASHTO, however, states that it “supports the ability of a TIS licensee to transmit

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Deputy Emergency Management Coordinator, Fort Bend County Texas; City Auditor, Ellendale, ND; Lake Havasu City Police Department; City of Kent, OH; City of Cape Coral, FL; City of Burien, WA; City of Aurora Office of Emergency Mgmt; Chesterfield County Public Affairs; City of Vacaville; Amador County Office of Emergency Services; City of San Ramon, CA; Cinnaminson Township Police; Ventura County Public Health Dept.; City of Glendale, CA; Arizona Game and Fish Department; City of Baytown, TX; Salt Lake Dept. of Airports; El Segundo Fire Dept.; Linda Folland, ISS, Zeeland, MI; Emmanuel Gross, Berry Creek, CA; Phillip Anderle, Greeley, CO; Wayne Curry, Mobile, AL; Mark Renner, NJ DOT.

⁴³ See, e.g., APCO Comments at 2 (“There is wide range of public safety-related information that should be permitted for broadcast on TIS stations, such as weather reports, Amber Alerts, public health messages and other civil defense notices.”); San Marco Comments (TIS “station was a primary provider of fire information during the recent Zaca, Gap and Tea fires in Santa Barbara county.”); Jasper Newton Sabine Counties Emergency Management Comments (“Our county will have two such stations on AM 1670 before Hurricane Season 2009. ... They are ... a great media tool to get out preparedness messages and they carry the transmissions of the National Weather Service 24 hours a day.”); UCLA Comments at 1 (“uses the Travelers Information Radio Station frequently as part of the UCLA's BruinAlert mass warning system [as it] is the only local resource we can use to issue evacuation notices, shelter in place, or other emergency instructions.”); Coral Gables Reply Comments at 1 (“We would like to utilize our HAR station for the purposes of alerting the public of Amber Alerts, Severe Weather Events and, to disseminate relief information following Disasters. We believe such a change would vastly enhance the usage of said stations and benefit the general public.”); Caltrans Comments at 2 (supporting AAIRO petition with exception of using TIS to transmit routine weather reports); Ronald Seitz, San Leandro, CA, Comments (vendor working with PS agencies who use TIS supports expansion to weather info); Chris Hilger, Alabama DOT Comments (include AMBER alerts); Middletown Township Comments at 2 (“these messages should be permitted, regardless of whether the potentially impacted individuals happen to be traveling or even contemplating travel”).

⁴⁴ AAIRO Reply Comments at 6.

⁴⁵ NAB Comments at 1.

⁴⁶ AASHTO Comments at 6-7 (footnotes omitted).

⁴⁷ AASHTO Letter at 3.

information regarding [non-routine] adverse conditions.”⁴⁸ In that regard, AASHTO urges the Commission to clarify that current FCC rules allow rebroadcast of NOAA weather radio on TIS only if “initiated through the reception of an encoded SAME transmission containing a weather message event code” which will terminate on the earlier of (1) receipt of an encoded SAME message canceling the event code, or (2) the passage of six hours.⁴⁹

19. We seek comment on AASHTO’s position and the distinction it makes between the rebroadcast over TIS of routine versus non-routine NOAA weather reports. We ask commenters to frame their comments in the context of: 1) the TIS service rules and whether they should be expanded to make a clear accommodation for non-routine NOAA reports; and 2) Sections 90.405(a)(1) and 90.407 of the Commission’s rules, which allow for, respectively, the transmission over the TIS service of “emergency communications” under certain circumstances and “any communications related directly to the imminent safety-of-life or property.” Are the existing Part 90 rules sufficient for the Commission to clarify that non-routine NOAA reports over TIS is permitted, as AASHTO requests? We clarify that we are not proposing to declare permissible under our existing rules anything that would be within the scope of our previous enforcement action against retransmission of NOAA broadcasts.⁵⁰

B. HIS Petition

20. The HIS Petition asks that the Commission (1) re-title the TIS service rules as “Local Government Radio Service,”⁵¹ (2) expand the permissible use rule in Section 90.242(a)(7) to “provide that stations in the local government radio service may be used to broadcast information of a non-commercial nature as determined by the government entity licensed to operate the station and other government entities with which the licensee cooperates,”⁵² and (3) “eliminate the limitation on the sites for local government radio stations that confines such stations to areas near roads, highways and public transportation terminals.”⁵³

21. In support of these proposed changes to the TIS rules, HIS states that the Commission actively promotes policies to “enhance the reliability, resiliency, and security of emergency alerts to the public by requiring that alerts be distributed over diverse communications platforms,”⁵⁴ and that “TIS stations provide a means of communicating with all Americans since only an AM radio is necessary to receive these communications. . . . TIS stations provide a communications channel that is diverse and redundant.”⁵⁵ HIS further notes that many “TIS stations are solar-powered and/or have battery backup systems and as a result they continue to operate during a power blackout.”⁵⁶

⁴⁸ AASHTO Comments at 7 (footnotes omitted).

⁴⁹ AASHTO Letter at 3. These requests did not appear in AASHTO’s subsequent petition for rulemaking. The SAME transmissions concern National Weather Service severe weather alerts and warnings. They are equivalent to many of the “Event codes” used in the Commission’s Emergency Alert System rules. See 47 C.F.R. § 11.31(e).

⁵⁰ See *supra* n.18.

⁵¹ HIS Petition at 9.

⁵² *Id.* at 10.

⁵³ *Id.*

⁵⁴ *Id.* at 4, quoting Commercial Mobile Alert System, PS Docket 07-287, *Third Report and Order*, 23 FCC Red 12561, 12563 ¶ 4 (2008).

⁵⁵ *Id.* at 4.

⁵⁶ *Id.* at 4-5.

22. Eleven of seventeen commenters supported the HIS Petition.⁵⁷ The majority of the supporting commenters provide additional perspectives on how the TIS service could be used should the Commission determine to revise the rules per the HIS petition.⁵⁸

23. “*Local Government Radio Service.*” HIS urges the Commission to re-title the TIS service rules as “Local Government Radio Service,” because it is “more consistent with the broader interests and responsibilities of the government.”⁵⁹ HIS states that given “the highly localized nature of these stations, the particular content broadcast on a station will be best determined by the government entity with jurisdiction over that specific location.”⁶⁰ Middletown Township also supports a change of the service’s name to reflect “less restrictive transmitter siting” as well as expanded content.⁶¹

24. APCO opposes the proposed name change to “Local Government Radio Service,” as this was the previous name of a Part 90, land mobile radio service.⁶² As an alternative, APCO suggests “Local Government AM Radio Service.”⁶³ Texas DOT states that “we do not support changing the radio service name to ‘Local Government Radio Service’ as ... some agencies may be tempted to broadcast programming which may belong on news media broadcasts rather than a government warning or alert system.”⁶⁴ We seek comment on whether the Commission should retain or change the name of the TIS service. Could a name change inadvertently induce TIS licensees to broadcast messages more appropriately delivered by local media broadcasters?

25. *Section 90.242(a)(7)(permissible use rule).* Given the highly localized content of TIS broadcasts, HIS also urges amendment of Section 90.242(a)(7) to ensure that editorial control over the content of TIS broadcasts rests squarely with the government entity licensed to operate the station.⁶⁵ HIS states that the government entity licensed to operate the station should have discretion to use the TIS service to broadcast any information of a noncommercial nature.⁶⁶ HIS’s proposal would appear to expand the existing scope of TIS to encompass information pertinent to non-travelers.

26. Middletown Township supports the HIS Petition and notes possible benefits to an expansion of Section 90.242(a)(7):

⁵⁷ See, e.g., City of Santa Monica, CA; Florida’s Turnpike Enterprise; Texas DOT; Utah DOT; City of Miramar, FL; Rhode Island DOT; Emanuel Gross, Berry Creek, CA; Palm Springs Fire Dept; Middletown Township; Local Government Licensees.

⁵⁸ See Florida Turnpike Enterprises Comments at 1 (use the service for AMBER, Silver and Law Enforcement Officer Alerts, evacuation information, 511 system information, electronic toll collection information, and traffic safety campaigns); Texas DOT Comments at 1 (include messages relating to Citizen Corps and Ready.gov, as well as NOAA broadcasts and AMBER alerts); Rhode Island DOT Comments at 1 (include traffic safety messages like “don’t drink and drive” and “buckle up”).

⁵⁹ HIS Petition at 9.

⁶⁰ *Id.* at 10.

⁶¹ Middletown Township Comments at 6.

⁶² APCO Comments at 2.

⁶³ *Id.*

⁶⁴ Texas DOT Comments at 1. It should also be noted that the HIS Petition does not expressly exclude “political” broadcasts.

⁶⁵ HIS Petition at 10.

⁶⁶ *Id.*

While the primary purpose of the TIS station is for emergency travel notifications and evacuation information when other media are limited or unavailable, the station also could effectively provide, to non-traveling residents, emergency readiness information related to the county-wide programs noted above, advice on preparation for emergencies, local-area relevant safety announcements related to approaching weather and developing hazards, power outage and restoration information, community announcements, tourist information, and information about the township's history, environment and parks. This latter public interest information would serve to develop listener awareness of the station so that when an emergency develops, the public is already attuned to this valuable information source.⁶⁷

Conversely, the National Association of Broadcasters (NAB) opposes the HIS Petition, stating that, "HIS Inc. cites only two instances in which licensees sought unsuccessfully to use TIS operations for prohibited purposes [energy conservation message and NWS forecast loop].... Two examples do not establish that the Commission's long-standing regulations on TIS operations are unwarranted and certainly do not justify wholesale changes to this service."⁶⁸ NAB further argues that given the "low-power service with an extremely limited, highly targeted reception area ... contrary to HIS Inc.'s suggestion that [its proposed amendments] would improve emergency alerting, [they] would not have any significant benefit for the public."⁶⁹ Similarly, AASHTO opposes the HIS Petition, stating that "the changes proposed by ... HIS would inadvisably broaden the type of information that TIS licensees may transmit, potentially diluting the value of the service."⁷⁰

27. We seek comment on whether and to what extent the changes proposed by HIS would or should alter the Commission's requirement for a nexus between TIS transmissions and traveling motorists. Several commenters contend that the changes proposed by HIS would amount to a *de facto* elimination of the TIS service as presently constituted.⁷¹ We seek comment on whether the public interest would be served by expanding the scope to include the broadcast of *all* non-commercial information or whether it is preferable to limit the scope of the changes to emergency alerts only, or some other subset of permissible content. Would it be possible to expand the scope of TIS as proposed by HIS while retaining the travel-nexus requirement? If not, would any subsequent restrictions placed on the scope of permissible TIS transmissions by government entities licensed to use TIS diminish their ability to communicate information of local concern to travelers? Would an expansion of the TIS service to include all non-commercial information affect the reliability of emergency alerts transmitted via TIS? Does continuing to require a traveler-related nexus serve the public interest? With respect to

⁶⁷ Middletown Township Comments at 5-6.

⁶⁸ NAB Comments at 3.

⁶⁹ *Id.* at 3-4.

⁷⁰ AASHTO Comments at 1. In its comments, AASHTO proposes TIS changes that do not appear in its own petition for rulemaking [discussed below], *i.e.* Commission specification of a mechanism by which a TIS operator may determine when an emergency begins and ends; renaming TIS the "Highway Advisory Radio" service, eliminating restrictions on "ribbon systems;" and permitting transmission over broader areas than now permitted.

⁷¹ Several commenters note this. For example, NPR states: "As envisioned in the HIS Petition, the TIS service would enable prospective station licensee [sic] to operate an apparently limitless number of stations, located throughout the country, and transmitting content of the licensee's choosing, subject only to the restriction that it not include advertising." NPR Comments at 5. NPR further asserts the Commission must "ask whether there is a compelling need to recast the existing TIS service if doing so will merely duplicates [sic] existing and emerging broadcast services." NPR Comments at 7. *See also* AAIRO Reply Comments at 3 (emphasis in original) ("The *HIS NPRM* would outright change TIS regulations.").

Middletown Township's argument that TIS stations could provide tourist information and information on local landmarks, we note that the TIS rules already expressly allow for the broadcasting of tourist information, such as directions, availability of lodging, and points of interest.⁷² If the travel-related nexus should be retained, we seek comment on the extent, if any, to which the type of information broadcast over the TIS service might be broadened without "diluting" the value of the service to travelers.

28. *Operational Limitations.* HIS asks that "the Commission eliminate the limitation on the sites for local government radio stations that confines such stations to areas near roads, highways and public transportation terminals."⁷³ HIS states that the local government licensee should have the discretion to determine site locations, provided that the interference criteria are met with respect to commercial AM radio station.⁷⁴

29. Hatfield & Dawson Consulting Engineers raise interference concerns regarding HIS's proposal to eliminate the TIS transmitter site limitation, claiming that it:

seeks a change in the rules which almost surely would result in substantial numbers of additional TIS facilities. The result would be a general increase in the background or ambient radio frequency noise levels in the medium wave "AM" broadcast band. This has a potential for increasing the overall level of interference to nighttime operation in the medium wave "AM" broadcasting band.⁷⁵

With regard to interference concerns from expanded TIS operations, HIS indicates that there has been "[no] showing of harmful interference" were the Commission to implement its requested changes to the TIS service.⁷⁶ We seek comment on HIS's assertion. Do the Section 90.242 interference protection standards adequately protect AM stations? Should the Commission adopt specific second and third-adjacent channel protection standards to ensure lack of interference to AM stations? To what extent could TIS broadcast locations be expanded without resulting in harmful interference to other licensees? Even if the risk of harmful interference resulting from expanded TIS broadcast operations is minimal, to what extent would those changes be of any practical usefulness given the limitations on power output presently established in the TIS rules? Would those power output limitations also need to be relaxed in order to provide local governments with any benefits? If power output limitations are relaxed, what rule changes are necessary to ensure that AM stations are adequately protected? Are there any other technical rules that would need to be changed?

30. *Ribbon Systems.* AASHTO suggests that "instead of changing the geographic limitations as HIS suggest, the FCC should consider the elimination of the TIS rules' restriction on 'ribbon systems.'"⁷⁷ AASHTO argues that "such ribbon systems could be useful in providing alternative route information to alleviate congestion and manage the flow of traffic during emergencies," such as "in the event of an evacuation due to a natural or manmade disaster."⁷⁸ AASHTO continues, "[t]emporary TIS

⁷² 47 C.F.R. § 90.242(a)(7).

⁷³ HIS Petition at 10.

⁷⁴ *Id.*

⁷⁵ Hatfield & Dawson Comments at 1-2.

⁷⁶ HIS Reply Comments at 4-5. *See also* Middletown Township Comments at 3 (TIS is not competitive with commercial broadcast stations).

⁷⁷ AASHTO Comments at 10.

⁷⁸ *Id.* at 10-11.

stations could be installed along evacuation routes to provide critical information regarding the availability of temporary emergency facilities and information regarding evacuation areas.”⁷⁹ We seek comment on AASHTO’s suggestion regarding ribbon systems in response to the HIS Petition.

31. We note that the Commission currently “precludes an applicant from setting up a ‘network,’ or ‘ribbon’ of transmitting stations along a highway for the purpose of continuously attracting a motorist with what could be superfluous information.”⁸⁰ Do users envision a ribbon system of TIS stations transmitting unique information applicable to each transmitter’s immediate area, or a system of stations transmitting in a synchronized mode, where all TIS stations transmit the same message in unison? In the latter scenario, it would not be possible for information to be tailored to the immediate area of each TIS transmitter. How is the latter scenario justified in light of the Commission’s intent to ensure that the TIS service is not used to attract travelers with what could be superfluous or redundant information? On the other hand, could AASHTO’s examples and other potential uses for ribbons systems provide benefits that outweigh the Commission’s original intent?

32. AASHTO argues that “the Commission should recognize that the rules should be modified to permit transmission over broader areas than now permitted.”⁸¹ It notes, for example, that “the area encompassed by NOAA SAME [Specific Area Message Encoder] broadcasts generally exceeds the current coverage area of a TIS station.”⁸² Section 90.242(b)(4)(iv) specifies that the field strength of TIS stations may “not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 km (0.93 miles) from the transmitting antenna system.”⁸³ AASHTO notes that, “[w]hen the Commission set the field strength requirements for this service, the national speed limit was 55 miles per hour.”⁸⁴ AASHTO contends that “[a] vehicle traveling at this speed would be within the effective service area for approximately two (2) minutes.”⁸⁵ AASHTO notes that “[s]ince 1977, the national speed limit was rescinded with the last states reverting to 65–70 mile per hour speed limits.”⁸⁶ Given higher speeds, vehicles would be within TIS service areas for shorter durations. AASHTO asserts that “the 2mV/M radiated power limitation effectively limits the amount of information that may be transmitted by a single location to approximately 90 seconds including station identification.”⁸⁷

33. We note that the Public Safety and Homeland Security Bureau has issued waivers of the field strength limit to permit TIS transmitters to reach broader areas.⁸⁸ We seek comment on AASHTO’s suggestion regarding field strength in response to the HIS Petition. Is the field strength limit necessary to protect AM broadcast stations and other TIS stations from interference when other technical limitations exist in the rules, such as power limits, antenna height limits, and minimum spacing requirements

⁷⁹ *Id.* at 11.

⁸⁰ *TIS Report and Order*, 67 F.C.C.2d at 923-24 ¶ 23.

⁸¹ AASHTO Comments at 11.

⁸² *Id.* at 11.

⁸³ 47 C.F.R. § 90.242(b)(4)(iv).

⁸⁴ AASHTO Comments at 11.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 11-12.

⁸⁸ See, e.g., *Howard County Order* and *Arlington County 2007 Order*, *supra*.

between TIS transmitters and AM broadcaster contours?⁸⁹ Is the field strength limit only needed because of the present requirement to provide specific information to the “immediate vicinity” of areas listed in Section 90.242(a)(5)? Would this limit be unnecessary if TIS stations were to be permitted to provide more general information that is applicable to broader areas? If the Commission allows TIS stations to serve broader areas, what should the new field strength limit be, if any? Would a relaxed field strength limit frustrate the purpose of the Commission’s spacing requirements between co-channel TIS stations as set forth in Section 90.242(b)(5) of the Commission’s rules?⁹⁰ Would additional technical or operational changes be necessary if the field strength limits were amended?

34. *Low-Power FM.* In comments, the Local Government Licensees (Wilmington, Delaware; Fairfax, Virginia; and Hanover County, Virginia) contend that our rules should be expanded to permit TIS stations to transmit a broader scope of noncommercial information, such as “official notices and related communications,” similar to government-operated low-power FM stations. We seek comment on this viewpoint.

C. AASHTO Petition

35. AASHTO’s petition seeks expansion of the present scope of the TIS rules to allow the broadcasting of AMBER Alerts and information about the availability of 511 services. The Commission received eleven comments on the AASHTO Petition. Nine comments were in full support, and one was neutral.⁹¹ AAIRO was the sole commenter in opposition, contending that the relief sought by AASHTO could be obtained by granting AAIRO’s declaratory ruling petition.⁹²

36. We seek further comment on AASHTO’s proposal to allow AMBER alerts and 511 service information. As noted above in denying AAIRO’s petition, these issues are not appropriate for resolution by declaratory ruling, but they are suitable for action by rulemaking. We therefore seek comment on whether we should amend the TIS rules to allow these specific applications.

V. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

37. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁹³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and

⁸⁹ See 47 C.F.R. § 90.242(a)(2)(1), (b)(3)(ii), (b)(4)(iii), and (b)(5).

⁹⁰ See 47 C.F.R. § 90.242(b)(5).

⁹¹ See APCO Comments at 2 (“Amber alerts should be permitted on TIS stations;” Botterell Comments at 1 (“I would support this Petition and [also] urge the Commission to expand the scope of any rulemaking to enable the use of Travelers’ Information System transmitters for dissemination of any warning regarding an imminent threat to human life or health, not only AMBER alerts.”); NPR Comments at 2 (“NPR supports the AASHTO Petition. . . . these proposed rule changes . . . can be implemented expeditiously through a narrowly focused rulemaking proceeding.”); NAB Reply Comments at 3 (“narrow and well-defined modification of the Commission’s rules”). See also five brief comments in support from Iowa DOT, the Maryland State Highway Administrator, New Hampshire DOT, Virginia DOT, and Wisconsin DOT.

⁹² AAIRO Comments at 2, 4.

⁹³ 47 C.F.R. §§ 1.200 *et seq.*

arguments presented is generally required.⁹⁴ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

B. Comment Filing Procedures

38. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). **All filings related to this Notice of Proposed Rulemaking should refer to RM-11514, PS Docket No. 09-19, and RM-11531.**

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **PLEASE NOTE:** The Commission's former filing location at 236 Massachusetts Avenue, NE is permanently closed.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

C. Accessible Formats

39. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

D. Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set

⁹⁴ *See* 47 C.F.R. § 1.1206(b)(2).

forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice of Proposed Rulemaking as set forth in paragraph 39, and have a separate and distinct heading designating them as responses to the IRFA.

E. Paperwork Reduction Act Analysis

41. This document contains no proposed or modified information collection requirements within the meaning of the Paperwork Reduction Act of 1995, Public Law 104-13.

F. Congressional Review Act

42. The Commission will send a copy of this Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), *see* 5 U.S.C. § 801(a)(1)(A).

VI. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 303, this Notice of Proposed Rulemaking IS ADOPTED.

44. IT IS FURTHER ORDERED that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 303, the petitions for rulemaking filed by Highway Information Systems, Inc., on July 16, 2008, and the American Association of State Highway and Transportation Officials on March 16, 2009, ARE GRANTED to the extent indicated herein.

45. IT IS FURTHER ORDERED that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and 303, the petition for ruling filed by the American Association of Information Radio Operators filed on September 9, 2008, IS DENIED.

46. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

47. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and interested parties may file reply comments on or before 45 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

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

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

2. Today's *NPRM* seeks to ensure that the Commission's Travelers Information Station (TIS) rules better serve all Americans. It seeks comment on the specific changes to the TIS rules proposed by three petitioners – AAIRO, HIS, and AASHTO, and on the overall approach that the Commission should take, *i.e.* whether the Commission should significantly expand the scope of permitted communications and alerts by local governments on TIS stations, or whether it should adopt more limited changes that are consistent with the traditional travel-related focus of TIS. Specifically, HIS proposes a *de facto* elimination of the TIS service as presently constituted by having the Commission expand the scope to include the broadcast of *all* non-commercial information; AAIRO would have the Commission allow the broadcast of a wide range of information over TIS, including NOAA Weather Radio retransmissions, AMBER Alerts, alternate phone numbers when local 911 systems fail, terror threat alert levels, public health warnings, and other civil defense announcements; and AASHTO proposes expanding the TIS rules to allow the broadcasting of AMBER Alerts and information about the availability of 511 services. To further serve the goal of determining the extent to which the scope of the TIS rules should be expanded, the *NPRM* invites additional comment on proposed changes to the rules that would expand both their content and operational restrictions.⁴

B. Legal Basis

3. Authority for the actions proposed in this *NPRM* may be found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303.

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

4. 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.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

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

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ See *NPRM* at ¶¶ 14-37 for a more detailed discussion of this subject.

⁵ 5 U.S.C. § 604(a)(3).

organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).⁸

5. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁹ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁰ However, we believe that only governmental jurisdictions hold TIS licenses. The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹¹ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.¹² This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. However, we estimate that approximately 1,340 governmental entities hold a TIS license, and only a subset of these entities constitute small governmental jurisdictions.¹³

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

6. There are no potential reporting or recordkeeping requirements proposed in this *NPRM*. The proposals set forth in this *NPRM* are intended to advance our public safety mission and enhance the performance of the TIS while reducing regulatory burdens wherever possible.

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

7. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance

⁶ 5 U.S.C. § 601(6).

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

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(4).

¹⁰ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹¹ 5 U.S.C. § 601(5).

¹² U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

¹³ Based on an FCC Universal Licensing System search of January 6, 2010. Search parameters: Radio Service = PW; Authorization Type = Regular; Status = Active; Frequency Upper Band >= 0.53; Frequency Assigned <= 1.7.

rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹⁴

8. The proposed rules are designed to minimally impact all TIS participants, including small entities, while at the same time protecting the lives and property of all Americans, which confers a direct benefit on small entities. None of the proposed rules is likely to have a significant economic impact on small entities as each of the proposed alternatives would loosen the present TIS rules to allow broadcast of additional information if that small entity so chose. There is nothing in the proposed rules requiring the broadcasting of additional information. Since the impact of all rules proposed is not mandatory but permissive, *i.e.* is a function of the licensee’s independent decision to add additional programming, or to decide not to do so, none of the proposed rules, if adopted, would directly impose any economic burden on any licensee, whether that licensee is a large or small entity. As noted in paragraph 2 above, the *NPRM* seeks comment on how the Commission may better protect the lives and property of Americans. In commenting on this goal, commenters are invited to propose steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose significant alternatives that serve the goals of these proposals. We expect that the record will develop to demonstrate any significant alternatives.

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

9. None.

¹⁴ 5 U.S.C. § 603(c)(1) – (c)(4).