



Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Donald J. Trump
President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500
Attention: Mr. Nicholas Fraser, Senior Policy Analyst, Executive Office of the President,
OMB

April 6, 2020

Dear President Trump:

The Federal Communications Commission (FCC) is responding to the Executive Order 13892 and compliance to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

**The Federal Communications Commission
RESPONSE TO SECTION 10 OF EXECUTIVE ORDER 13892
Office of Communications Business Opportunities (OCBO)**

Section 10 of Executive Order 13892 requires the Federal Communications Commission (FCC or Commission) to submit a report to the Office of the President, demonstrating that the FCC's civil administrative enforcement activities, investigations, and other actions comply with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).¹ The Order, dated October 9, 2019, also states that a report shall be submitted within 180 days of the date of the request.²

¹ *Executive Order 13892 of October 9, 2019, Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication*, 84 Fed. Reg. 55239, 55242, § 10 (Oct. 15, 2019) (E.O. 13892). The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is Pub. L. 104-121, Title II (1996), as amended.

² *Id.*

The FCC’s civil administrative enforcement activities, investigations, and other actions comply with SBREFA. The Commission has stated that it has implemented, or is otherwise in compliance with, the requirements enacted in SBREFA, Subtitles A-D. The Commission has explained that it has implemented the Regulatory Simplification Compliance Requirements of Subtitle A – it publishes Small Entity Compliance Guides at a regular interval and the last guide was published on March 20, 2020;³ the Regulatory Enforcement Reforms of Subtitle B;⁴ the Equal Access to Justice Act Amendments of Subtitle C;⁵ and the Regulatory Flexibility Act Amendments of Subtitle D.⁶ In addition, the Commission also complies with SBREFA, Subtitle E, also known as the Congressional Review Act (CRA).

³ *FCC Announces Small Entity Compliance Guide Program*, News Release, (June 25, 2004) available at <https://docs.fcc.gov/public/attachments/DOC-248808A1.pdf> (announcing the FCC’s “Small Entity Compliance Guide Program, pursuant to Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)”); *Compliance Guides for Small Businesses*, available at <https://www.fcc.gov/general/compliance-guides-small-businesses> (“Pursuant to Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission publishes small entity compliance guides on this website.”); *Reminder To Small Businesses About Availability of Information and Guidance From the FCC*, News Release, (Mar. 28, 1997) available at https://transition.fcc.gov/Bureaus/Compliance/News_Releases/1997/nrci7004.txt (observing that “Section 213 of the Small Business Regulatory Enforcement Fairness Act (SBREFA), Pub. L. 104-121, 110 Stat. 858 (1996), provides that, ‘wherever appropriate,’ agencies should have the practice of answering inquiries by small entities concerning information on, and advice about, compliance with applicable statutes and regulations” and, consistent with the FCC’s longstanding “goal of providing such information, . . . summariz[ing] major ways small entities can obtain such information, consistent with SBREFA” under FCC rules and other resources); *see also Section 257 Triennial Report To Congress Identifying and Eliminating Market Entry Barriers for Entrepreneurs and other Small Businesses*, Report, 31 FCC Rcd 12037, 12074, 10275, paras. 121, 123-25 (2016) (*2016 Section 257 Report to Congress*) (summarizing the FCC Office of Communications Business Opportunities’ (OCBO’s) outreach to, and communications with, small entities regarding the activities of the FCC and its work producing and distributing Small Entity Compliance Guides).

⁴ *Reminder to Small Businesses: SBA’s Office Of The National Ombudsman Is Available To Assist With Federal Enforcement Matters*, Public Notice, DOC 356188 (Off. of Comm. Bus. Opp. Feb. 20, 2020) available at <https://www.fcc.gov/document/reminder-small-businesses-sbas-office-national-ombudsman-0> (“remind[ing] small entities that the Office of the National Ombudsman within the U.S. Small Business Administration (SBA), is available to assist small entities with federal agency enforcement and compliance matters”); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17109, paras. 51-52 (1997) (discussing section 223 of SBREFA and explaining how the Commission’s enforcement policies reflected in its precedent and that rulemaking order comply with that statutory provision); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 11 (2015) (similar). *See also* <https://www.fcc.gov/eb-iaa> (list of enforcement investigative and adjudicatory areas); and the FCC notes the following on its enforcement actions: “Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.”

⁵ *Amendment of Rules, Sections 1.1501, et seq., Implementation of the Equal Access To Justice Act (EAJA) In Agency Proceedings*, Order, 11 FCC Rcd 9045, 9045, para. 1 (1996) (“By this Order, we amend our rules implementing the Equal Access to Justice Act (EAJA) for Commission proceedings in conformance with recent amendments of that Act adopted as part of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996).”).

⁶ *Section 257 Report To Congress Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses*, Report, 15 FCC Rcd 15376, 15440, para. 166 (2000) (explaining that “[s]ince enactment of the Small Business Regulatory Enforcement Fairness Act of 1996 (‘SBREFA’) amendments to the Regulatory Flexibility Act (‘RFA’), the Commission has worked diligently to make its RFA analyses more extensive, precise, and helpful, including a focus on plain language,” and “attempts to ensure full and accurate analyses and

Procedures for complying with the CRA have been distributed to all Commission Bureaus and Offices which are engaged in rulemakings and have been posted on the Commission's intranet website.

The Commission's existing practices thus satisfy the goals expressed in section 10 of Executive Order 13892.

certifications in the agency's 150 or more rulemaking items per year"); *2016 Section 257 Report to Congress*, 31 FCC Rcd at 12074, para. 122 (summarizing OCBO's work with FCC Bureaus and Offices in complying with the Regulatory Flexibility Act); *see also, e.g., Montgomery County v. FCC*, 863 F.3d 485, 495 (6th Cir. 2017) (rejecting a challenge to the Commission's Supplemental Final Regulatory Flexibility Analysis there because "[t]he agency's analysis of the relevant orders' effects upon small entities was procedurally adequate"); *Nat'l Tel. Co-op Ass'n v. FCC*, 563 F.3d 536, 540 (D.C. Cir. 2009) (rejecting a challenge to the FCC's analysis under the Regulatory Flexibility Act, and concluding instead that "the analysis at issue here undoubtedly addressed all of the legally mandated subject areas," and thus "it complies with the Act").