

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

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)

ORDER

Adopted: April 3, 2013

Released: April 3, 2013

By the Chief, Wireline Competition Bureau and Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we adopt the form and content for a survey of urban rates for fixed voice and fixed broadband residential services, which the Commission will use to implement universal service reforms adopted as part of the *USF/ICC Transformation Order*.¹ For the survey, we will annually select a statistically valid sample of urban providers who will complete the survey form adopted today with the information specified. The information collected in this survey will be used to establish a rate floor that eligible telecommunications carriers (ETCs) receiving high-cost loop support (HCLS) or frozen high-cost support must meet to receive their full support amounts and to help ensure that universal service support recipients offering fixed voice and broadband services do so at reasonably comparable rates to those in urban areas.² These measures are important components of the Commission's overall effort in the *USF/ICC Transformation Order* to improve accountability for the use of universal service funding.

2. Because we anticipate announcing reasonable comparability benchmarks derived from survey data after the deadline for the July 1, 2013 ETC annual reports, ETCs (both fixed and mobile) subject to section 54.313 of the Commission's rules³ are not expected to make any certification that their voice service rates are reasonably comparable to the national average urban voice rate, as required in section 54.313(a)(10), in their 2013 annual reports. Instead, this requirement will be initially implemented in the 2014 annual reports.

¹ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

² *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17751, 17855, paras. 239, 592. The rate floor is set at \$10 for the year beginning July 1, 2012, and \$14 for the year beginning July 1, 2013. Supported carriers were required to report their local rates below the relevant benchmark beginning July 1, 2012. These reports will be used to determine whether support reductions are required for carriers with artificially low rates.

³ 47 C.F.R. § 54.313.

II. BACKGROUND

3. On November 18, 2011, the Commission released the *USF/ICC Transformation Order and FNPRM*, which comprehensively reforms and modernizes the universal service and intercarrier compensation systems. In that *Order*, the Commission directed the Wireline Competition Bureau and Wireless Telecommunications Bureau (Bureaus) to conduct a survey of residential urban rates for voice services.⁴ Specifically, the Commission directed the Bureaus to “develop a methodology to survey a representative sample of facilities-based fixed voice service providers taking into account the relative categories of fixed voice providers as determined in the most recent FCC Form 477 data collection.”⁵ The Commission also delegated “authority to conduct an annual survey of urban broadband rates, if necessary, in order to derive a national range of rates for broadband service”⁶ and “to monitor urban broadband offerings, including by conducting an annual survey, in order to specify an appropriate minimum for usage allowances and to adjust such a minimum over time.”⁷ In the accompanying *FNPRM*, the Commission sought comment on various issues associated with determining reasonable comparability for voice and broadband rates.⁸

4. In response to the Commission’s direction, the Wireline Competition Bureau (Bureau) released a Public Notice seeking comment on the format and content of a proposed survey of urban rates for fixed voice and fixed broadband residential services. The Bureau also sought to further develop the record on how we could use the data collected in the survey to determine the local voice rate floor and the reasonable comparability benchmarks for fixed voice and fixed broadband services.⁹

III. DISCUSSION

5. In the *USF/ICC Transformation Order and FNPRM*, the Commission asked if it should “separately collect data on fixed and mobile voice telephony rates.”¹⁰ In the Public Notice, we sought more detailed comment specifically on the development of a survey for fixed services.¹¹ We now adopt a survey that collects data for fixed services.

6. We adopt a fixed-services specific survey because we have decided not to create a national average urban rate that represents a blended rate derived from both fixed and mobile data. We conclude that the differences in rate plans and other attributes of fixed and mobile services would make it inordinately difficult to create a unified benchmark. Accounting for all of these differences would require collecting substantial additional information as well as making numerous assumptions that could greatly complicate the development of the national average. For example, fixed and mobile voice offerings often differ in pricing structure, with fixed voice providers charging for unlimited calling in the local calling area and mobile providers charging for a bucket of any-distance minutes. Similarly, fixed and mobile broadband offerings typically differ substantially in speed and capacity allowances. Generating a blended fixed and mobile rate

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17694, para. 85. We are not addressing how we may collect data regarding mobile voice and broadband at this time.

⁵ *Id.*

⁶ *Id.* at 17708, para. 114

⁷ *Id.* at 17699, para. 99.

⁸ *Id.* at 18046-47, paras. 1018-27.

⁹ *Wireline Competition Bureau Seeks Comment on Proposed Urban Rates Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor*, WC Docket No. 10-90, 27 FCC Rcd 8332 (Wireline Comp. Bur. 2012) (*Urban Rate Survey Public Notice* or *Public Notice*).

¹⁰ *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18046, para. 1019.

¹¹ *Urban Rate Survey Public Notice*, 27 FCC Rcd at 8333, paras. 5-6.

would require accounting for the various innate properties of each service to make them “comparable.” Such a comparison would require assumptions about which service characteristics might be adjusted, and collection and analysis of data to understand customers’ valuation of such characteristics, both of which would be resource intensive.

7. In other respects, the Bureaus are continuing to consider the best approach to implementing the reasonable comparability requirements with respect to supported fixed and mobile services. In particular, some nationwide providers have argued that they should be able to meet the Commission’s reasonable comparability benchmarks by certifying that they charge the same prices in rural as urban areas.¹² We will address such arguments in a future order.

A. Survey Format and Sample Selection

8. As proposed in the Public Notice,¹³ we intend to implement this survey through an online reporting form accessible to those urban providers of fixed voice and broadband services that are chosen to participate.¹⁴ We will select urban providers using FCC Form 477 data so as to create a statistically valid sample that is representative of the relative proportion of fixed terrestrial providers for the purpose of setting a reasonable comparability benchmark for fixed voice and fixed broadband services and a rate floor for fixed voice service. Separate, independent samples will be chosen for the fixed voice and fixed broadband sections of the survey. As further proposed in the Public Notice, we will survey a statistically valid sample generated from all fixed terrestrial providers – regardless of regulatory status or technology – that serve urban census tracts in Metropolitan Statistical Areas (MSAs) across the country. We will direct each provider chosen as part of the sample to indicate prices it charges within the identified Census tract.

9. Although no commenters objected to this approach, the National Exchange Carrier Association, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, Eastern Rural Telecom Association, and the Western Telecommunications Alliance (together, NECA) urge the us to include within the survey sample in each MSA all types of providers, including providers that serve the whole MSA and providers that serve only a portion of the MSA.¹⁵ We agree. As proposed in the Public Notice, we will survey a statistically valid sample generated from all fixed terrestrial providers in each MSA,¹⁶ and we will not exclude providers based on the size of their service area within an MSA.

10. Consistent with our proposal in the Public Notice, we define “urban” for the purposes of this survey as all 2010 Census urban areas and urban clusters that sit within an MSA,¹⁷ which includes approximately 70-80 percent of the U.S. population.¹⁸ We will use Commission data, primarily collected

¹² See, e.g., AT&T Comments at 4; Verizon Comments at 7.

¹³ *Urban Rate Survey Public Notice*, 27 FCC Rcd at 8333, para. 7.

¹⁴ The Administrator, the Universal Service Administrative Company, may assist in administering the survey.

¹⁵ NECA Comments at 4.

¹⁶ We will determine whether and, if so, how the information should be weighted when we have evaluated the data collected.

¹⁷ *Urban Rate Survey Public Notice*, 27 FCC Rcd at 8333, para. 7.

¹⁸ The Census Bureau calculated that 80.7 percent of the U.S. population lives in urban areas, based on Census tracts. See United States Census Bureau 2010 Census Urban Area FAQs, <https://ask.census.gov/faq.php?id=5000&faqId=5971> (last visited Mar. 29, 2013). However, we plan to overlap MSAs onto urban Census tracts so a small population that is within the urban Census tract but outside of the MSA boundaries will be excluded from our calculations. Therefore, we project that the percentage of the population that will be included in our definition of “urban” will be between 70-80 percent.

from Form 477 submissions, to determine which providers are serving urban census tracts – this is the most efficient way to identify service providers in particular areas.¹⁹ No commenter objected to this proposal. As further proposed in the Public Notice, we will provide hyperlinks in the survey instrument so the respondent can easily associate the Census tract specified in the survey with a physical location within the respondent's service area.²⁰

11. We require that a provider with multiple operating companies within the same Census tract answer the survey questions for each operating company. One commenter requests that a survey respondent need only report data for one operating company in those cases where the survey respondent has more than one operating company in a particular tract.²¹ We are concerned, however, that allowing survey respondents to select from among multiple operating companies to report data could inadvertently introduce statistical bias in the survey results. Once survey results have been collected, we will select from among the reported companies in each Census tract in a manner that maintains statistical integrity.²²

12. As suggested by AT&T, we include language in the survey instructions specifying that providers should include in their responses information regarding all-distance voice services and broadband services even if those services are provided not just by the respondent, but by the respondent and an affiliate.²³ Particularly for local telephone operating companies, there may be numerous instances in which these entities provide all-distance voice service plans and/or broadband services in conjunction with an affiliate and failing to capture these offerings could result in substantially incomplete data.

B. Fixed Voice Offerings

13. *Types of services.* As proposed in the Public Notice, we require providers to report separately stand-alone,²⁴ non-discounted rates for their unlimited or flat-rate local service, unlimited all distance service, and measured or messaged local service. If the provider does not offer any of these services, it would indicate this and not report data for that category.²⁵ No commenter disagreed with this proposal. In addition, as the Wireline Competition Bureau proposed,²⁶ we require data for circuit switched and facilities-based VoIP services to be collected separately.²⁷ Further, we state explicitly in the instructions that grandfathered services and pricing are not to be reported in the survey.²⁸

¹⁹ *Urban Rate Survey Public Notice*, 27 FCC Rcd at 8333, para. 8.

²⁰ *Id.* We include in the instructions the definition of MSA, as requested by CenturyLink. See CenturyLink Comments at 3. We will select the providers that make up the statistically valid sample based on MSAs, but the notifications to selected providers will only require the reporting of data for one or more particular Census tracts.

²¹ CenturyLink Comments at 3-4.

²² We will determine whether to adopt an alternative approach in future surveys, such as requiring the submission of data only for the operating company with the most lines in a particular Census tract, after evaluating the data collected in the initial survey.

²³ AT&T Comments at 9-11.

²⁴ Because services such as over-the-top VoIP cannot be used without a broadband connection purchased separately by the customer, we are not including such services in the rate survey.

²⁵ *Urban Rate Survey Public Notice*, 27 FCC Rcd at 8333, para. 5.

²⁶ *Id.* at 8339, App. A (requesting indication of circuit switched or VoIP).

²⁷ AT&T suggests that the Bureau should establish separate benchmarks for circuit-switched services and VoIP services because of the different cost characteristics associated with these technologies. AT&T Comments at 8-9. We will determine whether there is a need for separate benchmarks after evaluating the data collected in the initial survey.

²⁸ See Verizon Comments at 7-8 (arguing that providers should only be required to report currently available offerings and that grandfathered offerings should be excluded).

14. *Bundled services.* We decline to include bundled pricing in the survey at this time. In response to the Public Notice, NECA suggests that the survey also should collect data on separately-identified service rates in bundled service offerings. NECA argues that the majority of customers now purchase bundles and that because bundled rates are generally lower than a la carte rates, excluding bundles could create an inflated rate floor.²⁹ Although we recognize that consumers may pay somewhat lower rates for fixed voice services when those services are purchased as part of a bundle, carriers today typically have discretion in how they allocate the price of a bundle among the services making up the bundle. Companies may base these allocations on regulatory requirements, state and local tax requirements or company-specific marketing initiatives. We are concerned about developing a rate floor and benchmark based on carrier self-reported allocations using inconsistent methodologies. Moreover, in the *USF/ICC Transformation Order*, the Commission specifically adopted a minimum rate floor “to avoid over-subsidizing carriers whose intrastate rates are not minimally reasonable.”³⁰ Because bundles are marketing devices used to induce consumers to purchase additional services based on a discount, benchmarks set based on these prices could be artificially low. We note that the Commission has used data for stand-alone fixed-only service for its rate benchmark in the past.³¹

15. *Non-recurring charges.* We will collect information regarding non-recurring charges in the initial survey and will determine whether to include this data as part of the benchmark after the survey results have been examined. Some commenters suggest we should not include these charges because such fees are “associated with initiating, extending, modifying, restoring, or repairing service, but are not the fees for the service itself,”³² differ by customer location and other factors that makes including them complex,³³ and are directly linked to marketing plans and are often waived.³⁴ We agree that such fees can differ substantially among customers depending on location and other factors and that including these charges will add complexity to the survey. Further, we are mindful that non-recurring charges are often part of marketing strategies and may be waived or discounted in order to attract customers. However, we are concerned that there may be cases in which providers offer high non-recurring charges in combination with low recurring charges or allow consumers to pay non-recurring charges on a monthly basis, and that excluding non-recurring charges from the survey would restrict the Bureaus’ ability to evaluate whether such charges would materially impact the outcome when setting the rate floor and reasonable comparability benchmarks.

16. *Recurring charges.* In the *USF/ICC Transformation Order*, the Commission determined that the rate floor should be based upon “end-user rates plus state regulated fees (specifically, state SLCs, state

²⁹ NECA Comments at 6; *accord* ACS Comments at 6 n.12 (stating “the results of the survey may be skewed by focusing only on rates for single categories of services, specifically voice and broadband services individually, when service offerings purchased by customers are increasingly bundled services”). *Cf.* CenturyLink Comments at 3 (proposed approach “should still enable a reasonable portrayal of the average rate paid for these services by urban customers”).

³⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17992, para. 915.

³¹ *See, e.g., Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4076, para. 8 (2010) (stating that the national rate benchmark is based on “the average urban rate as reported in the most recent annual rate survey published by the Wireline Competition Bureau”). The Commission cited the Bureau’s *Reference Book of Rates*, which in turn states that, “[t]he representative rate is the flat-rate service charge in those areas where this type of service was available.” Industry Analysis and Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service* at I-2 (August 2008) (footnote omitted).

³² ACS Comments at 8.

³³ CenturyLink Comments at 8; AT&T Comments at 9.

³⁴ NECA Comments at 10 n.27.

universal service fees, and mandatory extended area service charges).”³⁵ Therefore, notwithstanding arguments that fees, taxes, and surcharges beyond the provider’s control should not be included in the survey,³⁶ we are required to collect data on state SLCs, state universal service fees, and mandatory extended area service (EAS) charges. We conclude that there is a value in collecting information on such fees as individual line items on the survey in order to monitor over time the extent to which states impose fees for state universal service funds and mandatory EAS.

17. We have modified the proposed survey to include all other recurring surcharges, taxes, and Telecommunications Relay Service (TRS) charges as a single, aggregated survey question. This information is relevant to our development of reasonable comparability benchmarks. Although we acknowledge that these charges can vary by area and including them may raise the complexity of the survey somewhat, these charges may be a significant portion of customers’ monthly bills. We decline to include touch tone charges as a separate item in the survey at this time.³⁷ Several of the larger incumbent carriers eliminated separate touchtone charges more than a decade ago,³⁸ and we are not aware of a sufficiently large number of providers charging separately for touch tone service today to warrant its inclusion as a separate entry. To the extent some providers still charge separately for touch tone, they should report such charges in the line entitled “Total of all other surcharges, taxes, TRS, and touch tone charges.” For multiple, customer-chosen EAS charges, we include language in the survey instructions to specify how the provider should separately report mandatory and voluntary EAS charges.

18. *Local calling areas.* We decline to collect information regarding calling area size and scope in the survey. Several commenters argue that the survey should gather this information because the typically smaller number of persons within a calling area in rural areas as compared to urban calling areas must be taken into account in calculating the rate floor.³⁹ In adopting the rate floor rule, the Commission was seeking to ensure that consumers in high-cost areas pay some minimum amount to support the cost of the network before turning to the federal support mechanism, which ultimately is borne by consumers across the nation.⁴⁰ As the Commission stated, “we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.”⁴¹ Calling areas (like local retail rates) are established by the states based on

³⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238. The Commission reiterated this position in its Third Order on Reconsideration of the *USF/ICC Transformation Order*. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622, 5630, para. 22 (2012) (subsequent history omitted).

³⁶ CenturyLink Comments at 5-7; AT&T Comments at 9-11; ACS Comments at 7.

³⁷ NECA asked the Bureau to clarify how providers should report touch tone charges and EAS charges. NECA Comments at 6.

³⁸ See, e.g., Associated Press, *GTE told to drop touch-tone charge*, The Ledger (Dec. 22, 1992), available at <http://news.google.com/newspapers?nid=1346&dat=19921222&id=UktIAAAAIBAJ&sjid=aPwDAAAAIBAJ&pg=4685,178289>; Carla Lazzareschi, *‘Touch-Tone’ Charges to End; Some Phone Rates May Rise*, L.A. Times (Nov. 22, 1990), available at http://articles.latimes.com/1990-11-22/business/fi-7011_1_service-charges; Rene Stutzman, *Using Touchtone Just Got Cheaper For Many, Southern Bell Drops \$1 A Month Charge For Service*, Orlando Sentinel (Feb. 7, 1994), available at http://articles.orlandosentinel.com/1994-02-07/business/9402050210_1_touchtone-florida-charge-for-service; *Verizon hangs up on Touch-Tone calling charge*, Philadelphia Business Journal (Sept. 22, 2000), available at <http://www.bizjournals.com/philadelphia/stories/2000/09/18/daily29.html> (reporting that Verizon was eliminating touch-tone charge for former GTE customers in Pennsylvania).

³⁹ See, e.g., Texas Cooperative Comments at 9; NECA Comments at 5.

⁴⁰ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238 (“[T]he purposes of this rule change are to ensure that *states* are contributing to support and advance universal service and that consumers are not contributing to the [Universal Service] Fund to support customers whose rates are below a reasonable level”) (emphasis in original).

⁴¹ *Id.* at 17751, para. 237.

factors such as the attributes and needs of local communities and are not necessarily related to the cost of service.⁴² Considering local calling areas in the rate floor analysis would be inconsistent with the Commission's efforts to avoid subsidizing artificially low local rates.⁴³

19. *Multiple rate zones within Census tract.* We make a minor modification to the proposal in the Public Notice to address the situation in which providers may have multiple zones that have different rates and fees within a single Census tract.⁴⁴ To avoid confusion or the possibility that providers will use varying methods to determine an average rate among multiple zones, we include in the survey instructions that indicate that if a provider has multiple rates or other fees/taxes within a single, surveyed Census tract, the provider should report all of the rates for that Census tract separately. The Bureau will then determine which rates should be included in the survey in a manner that will avoid introducing statistical bias.

C. Fixed Broadband Offerings

20. *Types of services.* We require providers to report all residential, non-discounted rates for all standalone service speeds above 200 kbps offered in the specified Census tract. This is a change from the original proposal that offerings be placed in one of four service tiers.⁴⁵ We agree with commenters that the proposed categories in the Public Notice might not accommodate the variety of plans currently offered.⁴⁶ The modified survey will ensure we have an understanding of the speeds available in the marketplace and will be easier for respondents to complete.

21. We conclude that requiring survey respondents to use the speed categories in FCC Form 477 would involve more time and resources for filers than necessary for the Bureau to fulfill its obligations. Although NECA claims that this will minimize the burden on providers,⁴⁷ we are not persuaded. For Form 477, providers report existing subscriber counts for seventy-two download and upload speed combinations. Because Form 477 requires providers querying their existing customer databases for subscriber counts and the rate survey requires providers to report rates that would be offered to a hypothetical prospective customer, we see little reason to believe using the Form 477 speed tiers would reduce burden.

22. We conclude that requiring providers to report offerings both above and below the 4 Mbps down/1 Mbps up standard is necessary to fulfill our obligations. We disagree with the suggestions of several commenters that the Bureau should limit the survey to inquire solely about offerings near 4 Mbps down/1 Mbps up because only this speed is eligible for Connect America Fund support and all other offerings are therefore irrelevant or beyond the Commission's authority.⁴⁸ In the *USF/ICC Transformation Order*, the Commission concluded that it "must also lay the groundwork for longer-term evolution of CAF broadband

⁴² *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Order on Remand and Report and Order, 25 FCC Rcd 4072, 4105, paras. 62-63 (2010), *aff'd sub nom Vermont Pub. Svc. Bd. v. FCC*, 661 F.3d 54 (D.C. Cir. 2011).

⁴³ *Id.* at 17749-50, para. 235 ("We do not believe that Congress intended to create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in section 254(b) [of the Communications Act of 1934, as amended]; rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly *higher* than in urban areas") (emphasis in original).

⁴⁴ See CenturyLink Comments at 4-5; NECA Comments at 6.

⁴⁵ *Urban Rate Survey Public Notice*, 27 FCC Rcd at 8333, para. 6 n.5.

⁴⁶ CenturyLink and Verizon noted that provider offerings may not fit within the categories proposed in the Public Notice. CenturyLink Comments at 7; Verizon Comments at 9.

⁴⁷ NECA Comments at 7.

⁴⁸ See CenturyLink Comments at 7; AT&T Comments at 10-11; ACS Comments at 7.

obligations, as we expect technical capabilities and user needs will continue to evolve. We therefore commit to monitoring trends in the performance of urban broadband offerings through the survey data we will collect and rural broadband offerings through the reporting data we will collect.”⁴⁹ The Commission thus has directed the Bureaus to conduct a survey of not just services that are close to 4 Mbps down/1 Mbps up broadband standard, but also of trends in the broadband market.⁵⁰ To fulfill this obligation, we must obtain information on a range of broadband speeds available in the market.

23. *Capacity allowances.* We adopt our proposal that providers report on any capacity allowances and what actions are taken when the capacity allowance is exceeded. We specifically identified possible actions to include overage charges, blocking traffic, and rate limiting.⁵¹ No commenter objected to including capacity allowance in our survey, and we conclude that it is necessary to know the allowances (if any) associated with each service offering at a given price. We adopt the suggestion of the Alaska Rural Coalition that the Bureau also request information regarding provider roll-over offerings – “the provider practice of allowing customers to ‘roll over’ their unused capacity for a month to apply to future months of service.”⁵² We agree that it would be useful to collect information on roll-over practices and add “roll over” as an option in the capacity allowance question.

24. *Bundling, recurring, and non-recurring charges.* We conclude at this time that respondents will not be required to include in their survey responses rates for any service that cannot be purchased on a stand-alone basis.⁵³ As explained above for voice service, determining how to allocate the price of a bundled service among its components is difficult, and bundled service providers allocate pricing using different methodologies. Seeking data on prices for offerings not actually offered in the marketplace would likely skew the survey results.

25. We will collect information regarding non-recurring charges associated with broadband services and determine whether to include this data in the broadband benchmark once we have evaluated the initial survey results. We conclude it is reasonable to gain a better understanding of the total price that consumers are paying, including non-recurring charges, before setting the broadband comparability benchmark. Therefore, we will adopt the recurring taxes, fees, and surcharge questions as proposed in the Public Notice.

D. Non-Fileers

26. We will contact directly any provider that is sent a survey notification that does not complete the online survey form within 30 days. Compliance with the rules adopted in this Order is mandatory, and failure to comply may lead to enforcement action, including forfeiture penalties, pursuant to the Communications Act of 1934, as amended, and other applicable law.⁵⁴

E. Filing Procedures

27. Once the Office of Management and Budget has completed its review of the survey collection requirements adopted today, we will issue a public notice providing detailed instructions and announcing when the survey notifications will be distributed.

⁴⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17703, para. 106 (footnote omitted).

⁵⁰ *Id.* at 17703, para. 106 n.173.

⁵¹ *Urban Rate Survey Public Notice*, 27 FCC Rcd at 8333, para. 6.

⁵² Alaska Rural Coalition Comments at 4 (footnote omitted).

⁵³ Verizon asks that the Bureau clarify whether providers are required to report rates for broadband services that are offered only to customers purchasing voice services on the same account. Verizon Comments at 8.

⁵⁴ See 47 U.S.C. §§ 401(b), 409(m), 501, 502, 503; 47 C.F.R. § 1.80.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

28. As required by the Regulatory Flexibility Act of 1980 (RFA),⁵⁵ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix C.

B. Final Paperwork Reduction Act of 1995 Analysis

29. This Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It has been or will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

C. Congressional Review Act Analysis

30. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.⁵⁶

V. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 5, 201-205, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155, 201-205, 218-220, 254, 303(r), and 403, sections 0.91, 0.131, 0.201(d), 0.291, 0.331 and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.201(d), 0.291, 0.331, 1.427, and the delegations of authority in paragraphs 85, 99, 106, 114, and 246 of the *USF/ICC Transformation Order*, FCC 11-161, that this Order IS ADOPTED.

32. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE thirty (30) days after publication in the Federal Register, except for the requirements contained in paragraphs 11-13, 15-17, 19-20, 23, and 25-26, and Appendix A, which are subject to the Paperwork Reduction Act (PRA). These requirements include new or modified information collection requirements that require approval by the Office of Management and Budget under the PRA, and SHALL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date(s).

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

⁵⁵ 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. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

⁵⁶ See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; *see* Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

34. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

Ruth Milkman
Chief
Wireless Telecommunications Bureau

APPENDIX A

Urban Rates Survey Form

I. SURVEY RESPONDENT INFORMATION	
Provider Name:	<i>Pre-populated by FCC</i>
Operating Company Name:	
Provider FRN (used on MONTH DAY, YEAR Form 477):	
Provider Study Area Code (if current USF recipient):	
Name of Person Completing Form:	
Contact Phone Number:	
Contact Email Address:	
Name of Certifying Official:	
Certifying Official's Phone Number:	
Certifying Official's Email Address:	
Location for Which Reported Rates Apply:	<i>Pre-populated by FCC</i>

II. FIXED VOICE INFORMATION

For each specified voice service offered within the Census tract on MONTH DAY, YEAR, respondents must report non-discounted recurring monthly rates and service initiation charges. Detailed instructions for each question section are provided in the particular section. Note that circuit-switched and VoIP service information should be reported separately as indicated.

II.a Rate and Charge Information

In some cases, multiple rates and or taxes/fees/surcharges may exist for the same service within the Census tract. If this occurs for the specified Census tract, respondents must report the least and most expensive total cost offerings. For example, if two different rates (or other surveyed amounts such as taxes) for flat-rate, local service are applicable to two different portions of the Census tract, then the respondent should indicate that multiple rates exist.

	Circuit Switched			VoIP		
	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service
Do multiple rates and/or taxes, fees, surcharges exist for this service offering within the same specified Census tract?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

II.a.1 Monthly Rates

For each service offered, report each component of the rate in dollar and cents amounts. If both circuit switched and VoIP service are offered, report information for both service. Reported monthly rates should be standard, non-discounted residential rates. If there are multiple rates or taxes/fees/surcharges for the same service offering in the specified Census tract (indicated by "Yes" in the previous question), report the least total monthly cost offering in Sections 11.a.1 and 11.a.2, and the greatest total monthly cost rates in Sections II.a.3 and II.a.4. If there is only one rate to report, use Sections 11.a.1 and 11.a.2. "All-distance" services include only domestic calling, not international.

	Circuit Switched			VoIP		
	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service
Recurring service charge (without SLC)						
Federal subscriber line charge (SLC), if any						
Access Recovery Charge (ARC), if any						
State SLC, if any						
State USF charge, if any						
Mandatory extended area service (EAS) charges, if any						
Voluntary EAS charges, if any						
Total of all other surcharges, taxes, and TRS charges. (See instructions for a list of charges to be included.)						
Number of voice calls or message units included in monthly rate if measured service (local service area calls only)	NA	NA		NA	NA	
Dollar calling allowance for voice calls included in monthly rate if measured service (local service area calls only).	NA	NA		NA	NA	
Peak period local rate per unit (minute or call/message) once allowance exceeded, if measured service.	NA	NA	<i>Indicate if rate is per call or per minute</i>	NA	NA	<i>Indicate if rate is per call or per minute</i>
Off-peak period local rate per unit (minute or call/message) once allowance exceeded, if measured service.	NA	NA	<i>Indicate if rate is per call or per minute</i>	NA	NA	<i>Indicate if rate is per call or per minute</i>

II.a.2 Service Initiation Charges

For each item listed, report the minimum non-discounted amount a customer would pay for each non-recurring charge. If an item is not offered by the carrier, then mark "N/A."

	Circuit Switched			VoIP		
	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service
Total connection charge for residential service if no premises visit is required.						
Minimum additional charge if drop line and terminal block are needed to connect service. Do not include any inside wiring charges.						
Mandatory surcharges on connection accounted as company revenue						
State, county, and local taxes and surcharges on connection						
Other mandatory connection charges						

II.a.3 Monthly Rates (Use only if multiple rates)

Only use the following rates and charges questions if reporting multiple rates and/or taxes/fees/surcharges for the same service in the same Census tract. Report rates and charges for the greatest total monthly cost offering.

	Circuit Switched			VoIP		
	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service
Recurring service charge (without SLC)						
Federal subscriber line charge (SLC), if any						
Access Recovery Charge (ARC), if any						
State SLC, if any						
State USF charge, if any						
Mandatory extended area service (EAS) charges, if any						
Voluntary EAS charges, if any						
Total of all other surcharges, taxes, and TRS charges. (See instructions for a list of charges to be included.)						
Number of voice calls or message units included in monthly rate if measured service (local service area calls only)	NA	NA		NA	NA	
Dollar calling allowance for voice calls included in monthly rate if measured service (local service area calls only).	NA	NA		NA	NA	
Peak period local rate per unit (minute or call/message) once allowance exceed, if measured service.	NA	NA	<i>Indicate if rate is per call or per minute</i>	NA	NA	<i>Indicate if rate is per call or per minute</i>
Off-peak period local rate per unit (minute or call/message) once allowance exceeded, if measured service.	NA	NA	<i>Indicate if rate is per call or per minute</i>	NA	NA	<i>Indicate if rate is per call or per minute</i>

II.a.4 Service Initiation Charges (Use only if multiple rates)

For each item listed, report the minimum non-discounted amount a customer would pay for each non-recurring charge. If an item is not offered by the carrier, then mark "N/A."

	Circuit Switched			VoIP		
	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service	Unlimited or Flat-Rate Local Service	Unlimited All-Distance Service	Measured or Messaged Local Service
Total connection charge for residential service if no premises visit is required.						
Minimum additional charge if drop line and terminal block are needed to connect service. Do not include any inside wiring charges.						
Mandatory surcharges on connection accounted as company revenue						
State, county, and local taxes and surcharges on connection						
Other mandatory connection charges						

III. INTERNET SERVICE INFORMATION

For each standalone, Internet service offered in the specified Census tract on MONTH DAY, YEAR, report information on the service's technology, advertised speeds, capacity allowances (if any), recurring rates, and non-recurring rates. Only report offerings where both the download and upload speeds are at least 200 kbps. Detailed instructions for each question section are provided in the particular section. Report information for each service offering distinguished by speeds, technology, and capacity allowance (if any). In the form, each column represents a separate speed/technology/capacity allowance combination.

III.a Service Information

Report information for each service offering distinguished by speeds, technology, and capacity allowance (if any). For example, if in the specified Census tract, unlimited 5/2 Mbps residential service is offered using either DSL or fiber to the home (FTTH), then report the 5/2 Mbps DSL unlimited service in one column and the 5/2 Mbps FTTH unlimited service in the next column. As another example, if a 10/2 Mbps DSL services is offered with either a a 100 GB or 200 GB capacity allowance then report the 10/2 Mbps DSL 100 GB service in one column and the 10/2 Mbps DSL 200 GB service in the next column. Use as many columns (and extend as necessary) to report on all offered services. A drop down box allows for selecting the following technologies: DSL, FTTH, cable, fixed wireless, and other. Note that FTTH should only be used if the optical fiber reaches the boundary of the living space, such as a box on the outside wall. Report advertised speeds in Mbps.

<i>SERVICE OFFERING NUMBER</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
Service Technology										
Advertised Download Speed (Mbps)										
Advertised Upload Speed (Mbps)										

III.b Capacity Allowance Information

Report capacity allowances (in GB) applied to the service, if any. A capacity allowance is the monthly data usage level at which the Internet Service provider begins to block, rate-limit, or charge excess fees for additional data transmission. If a service offering has no specified allowance then enter "Unlimited." For each capacity allowance in place, indicate what action is taken when the allowance is reached. For services with capacity allowances, a drop down box will offer a menu of actions the ISP will take once the limit is reached. These include "Overage Charge," "Blocking Traffic," "Rate-limiting," and "Other." If a capacity allowance is based on a customer's use relative to other customers, report the data amount (in GB) for which the allowance would be reached as of MONTH DAY, YEAR. Also indicate whether un-used data capacity may be "rolled over" from month to month.

<i>SERVICE OFFERING NUMBER</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
Monthly capacity allowance on service (GB), if any. If no specified allowance, choose "Unlimited."										
May unused capacity be rolled-over to the next month?										
If the capacity allowance is reached, what action is taken?										

III.c Rate and Charges Information

In some cases, multiple rates and/or taxes/fees/surcharges may exist for the same service within the Census tract. If this occurs for the specified Census tract, respondents must report the least and most expensive total cost offerings.

<i>SERVICE OFFERING NUMBER</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
Do multiple rates and/or taxes, fees, surcharges exist for the same service offering within the same specified Census tract?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

III.c.1 - Recurring Rates

For each service offering, report each component of the rate in dollar and cents amounts. Reported monthly rates should be standard, non-discounted residential rates. In some cases, this may be the month-to-month rate available to a customer not eligible for introductory rates, etc. If there are multiple rates or taxes/fees/surcharges for the same service offering in the specified Census tract (indicated by "Yes" in the previous question), report the least total monthly cost offering in the Sections III.c.1 and III.c.2, and the greatest total monthly cost rates in Sections III.c.3 and III.c.4. If there is only one rate to report, use Sections III.c.1 and III.c.2.

<i>SERVICE OFFERING NUMBER</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
Recurring monthly charge										
Total of state, local, and municipal taxes										
Total of all other mandatory fees and taxes (such as provider surcharges, etc.) passed through.										
Surcharges on the service accounted as company revenue (i.e. non-pass through)										

III.c.2 - Non-Recurring Charges

For each item listed, report the minimum amount a customer would pay for each non-recurring charge if the item is required for the Internet service. If an item is not offered by the provider, then mark it as "NA".

<i>SERVICE OFFERING NUMBER</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
Activation or connection <i>not</i> requiring a service visit to the premises										
Activation or connection requiring a service visit (but assuming the premises is already physically wired)										
Does this service require the customer use a modem or other hardware?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
If "Yes" for modem and hardware question, what is the purchase price for necessary hardware? (if provider sells such hardware.)										
If "Yes" for modem and hardware question, what is the <u>monthly rental price</u> for necessary hardware? (if provider rents hardware.)										
Computer/laptop hook-up by service technician already making a service visit.										

III.c.3 - Recurring Rates (Use only if multiple rates)

Only answer the following rates and charges questions if reporting multiple rates and/or taxes/fees/surcharges for the same service in the same Census tract. Report rates and charges for the greatest total monthly cost offering.

<i>SERVICE OFFERING NUMBER</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
Recurring monthly charge										
Total of state, local, and municipal taxes										
Total of all other mandatory fees and taxes (such as provider surcharges, etc.) passed through.										
Surcharges on the service accounted as company revenue (i.e. non-pass through)										

III.c.4 - Non-Recurring Charges (Use only if multiple rates)

For each item listed, report the minimum amount a customer would pay for each non-recurring charge if the item is required for the Internet service. If an item is not offered by the provider, then mark it as "NA".

<i>SERVICE OFFERING NUMBER</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
Activation or Connection <i>not</i> requiring a service visit to the premises										
Activation or connection requiring a service visit (but assuming the premises is already physically wired)										
Does this service require the customer use a modem or other hardware?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
If "Yes" for modem and hardware question, what is the purchase price for necessary hardware? (if provider sells such hardware.)										
If "Yes" for modem and hardware question, what is the <u>monthly rental price</u> for necessary hardware? (if provider rents hardware.)										
Computer/laptop hook-up by service technician already making a service visit.										

APPENDIX B

List of Commenters

Commenter	Abbreviated name
Alaska Communications Systems Group, Inc.	ACS
Alaska Rural Coalition	ARC
AT&T	AT&T
CenturyLink	CenturyLink
Frontier Communications Corporation	Frontier
National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Eastern Rural Telecom Association, and the Western Telecom Alliance	NECA
Public Service Commission of West Virginia	West Virginia PSC
Texas Statewide Telephone Cooperative, Inc.	Texas Cooperative
Verizon and Verizon Wireless	Verizon

APPENDIX C

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Urban Rate Survey Public Notice*.² The Bureau sought written public comment on the proposals in the *Urban Rate Survey Boundary Public Notice*, including comment on the IRFA. No comments were received addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for and Objective of the Order

2. The Order adopts a survey of urban rates for fixed voice and fixed broadband residential services for purposes of implementing various reforms adopted as part of the *USF/ICC Transformation Order*.⁴ In the *USF/ICC Transformation Order*, the Commission comprehensively reformed universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband service.⁵ As discussed in the Order, the rate survey will be used to develop benchmarks and rate floors to insure supported providers' rates are not unreasonably high or unnecessarily low.⁶

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

3. No parties have raised significant issues in response to the IRFA.

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

4. Pursuant to the Small Business Jobs Act of 2010, 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 any comments in response to the proposed rules in this proceeding.

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

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein.⁷ The RFA generally

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 *Urban Rate Survey Public Notice* at 13-19.

³ See 5 U.S.C. § 604.

⁴ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*); *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

⁵ See *id.*

⁶ See *Urban Rate Survey Public Notice* at 2.

⁷ 5 U.S.C. § 603(b)(3).

defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ 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.¹⁰ Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

6. **Small Businesses.** Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.¹¹

7. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹² According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.¹³ Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.¹⁴ Thus, under this size standard, the majority of firms can be considered small.

8. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.¹⁶ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹⁷ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies adopted in the Order.

9. **Incumbent Local Exchange Carriers (incumbent LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸ According

⁸ 5 U.S.C. § 601(6).

⁹ 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.”

¹⁰ 15 U.S.C. § 632 (1996).

¹¹ See SBA, Office of Advocacy, “Frequently Asked Questions,” <<http://www.sba.gov/sites/default/files/FINAL%20FAQ%202012%20Sept%202012%20web.pdf>> (visited Oct. 5, 2012).

¹² 13 C.F.R. § 121.201, NAICS code 517110.

¹³ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

¹⁴ See *id.*

¹⁵ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁶ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

¹⁷ See *id.*

¹⁸ See 13 C.F.R. § 121.201, NAICS code 517110.

to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.¹⁹ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.²⁰ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted in the Order.

10. **Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²¹ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.²² Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.²³ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.²⁴ In addition, 72 carriers have reported that they are Other Local Service Providers.²⁵ Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.²⁶ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

11. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.²⁷ Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.²⁸ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.²⁹ For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.³⁰ Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.³¹ Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony

¹⁹ See *Trends in Telephone Service* at Table 5.3.

²⁰ See *id.*

²¹ See 13 C.F.R. § 121.201, NAICS code 517110.

²² See *Trends in Telephone Service* at Table 5.3.

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.*

²⁶ See *id.*

²⁷ See 13 C.F.R. § 121.201, NAICS code 517210.

²⁸ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

²⁹ 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

³⁰ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

³¹ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

services.³² Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.³³ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

12. **Local Multipoint Distribution Service.** Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.³⁴ The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³⁵ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³⁶ The SBA has approved these small business size standards in the context of LMDS auctions.³⁷ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

13. **Cable and Other Program Distribution.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”³⁸ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.³⁹ According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.⁴⁰ Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.⁴¹ Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

14. **Cable Companies and Systems.** The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable

³² See *Trends in Telephone Service* at Table 5.3.

³³ See *id.*

³⁴ See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997) (“*LMDS Second Report and Order*”).

³⁵ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, para. 348.

³⁶ See *id.*

³⁷ See *Alvarez to Phythyon Letter 1998*.

³⁸ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

³⁹ See 13 C.F.R. § 121.201, NAICS code 517110.

⁴⁰ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

⁴¹ See *id.*

company” is one serving 400,000 or fewer subscribers, nationwide.⁴² Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁴³ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.⁴⁴ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.⁴⁵ Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

15. **Cable System Operators.** The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 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.”⁴⁶ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁴⁷ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.⁴⁸ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,⁴⁹ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

16. **Open Video Services.** The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.⁵⁰ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁵¹ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications

⁴² See 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See *Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

⁴³ These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁴⁴ See 47 C.F.R. § 76.901(c).

⁴⁵ WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

⁴⁶ 47 U.S.C. § 543(m)(2); see also 47 C.F.R. § 76.901(f) & nn.1-3.

⁴⁷ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

⁴⁸ These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁴⁹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission’s rules.

⁵⁰ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606 para. 135 (2009) (“*Thirteenth Annual Cable Competition Report*”).

⁵¹ See 47 U.S.C. § 573.

Carriers.”⁵² The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.⁵³ Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.⁵⁴ Thus, under this second size standard, most OVS operators are small and may be affected by rules adopted pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service.⁵⁵ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁵⁶ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

17. **Internet Service Providers.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”⁵⁷ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁵⁸ According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.⁵⁹ Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.⁶⁰ Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year.⁶¹ Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more.⁶² Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

⁵² U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁵³ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

⁵⁴ *See id.*

⁵⁵ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

⁵⁶ *See Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁵⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁵⁸ 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

⁶⁰ *See id.*

⁶¹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171103 (issued Nov. 2010).

⁶² *See id.*

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

18. In the Order, the Bureau adopts a survey of urban rates for fixed voice and fixed broadband residential services. Specifically, it requires reporting by a number of entities that are included in the sample, including some small entities, of advertised rates and product offerings.

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

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁶³

20. The requirements adopted in the Order comprise an efficient data collection process that imposes the smallest burden on fixed voice and fixed broadband providers that still allows the Commission to gather the necessary data to meet the goals of the *USF/ICC Transformation Order*. The rate survey is not anticipated to have a significant economic impact on small entities because the survey will only sample a small number of providers. Furthermore, since the statistical sampling methodology will result in larger entities being more likely to be surveyed, we anticipate small entities will only compose a minor portion of the overall sample. Moreover, the survey only asks about advertised rates and product offerings which should be readily available to entities of any size. Furthermore, any significant economic impact cannot necessarily be minimized through alternatives since the survey sample will already be restricted to a small set of the total population of carriers necessary for generating a statistically valid sample, and the survey will only ask for readily available advertised rates and will be implemented in an easily accessible online format.

G. Report to Congress

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

⁶³ See 5 U.S.C. § 603(c).