



PUBLIC NOTICE

Federal Communications Commission
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MEDIA BUREAU SEEKS COMMENT ON WHETHER TO EXTEND THE EFFECTIVE DATE OF NEW TRUTH-IN-BILLING REQUIREMENTS IN THE TELEVISION VIEWER PROTECTION ACT OF 2019

MB Docket No. 20-61

Comment Date: [21 days after Federal Register publication]
Reply Comment Date: [28 days after Federal Register publication]

On December 20, 2019, Congress enacted the Television Viewer Protection Act of 2019 (TVPA),¹ which added section 642 to Title VI of the Communications Act of 1934, as amended (the Act).² Section 642 requires multichannel video programming distributors (MVPDs) to “give consumers a breakdown of all charges related to the MVPD’s video service” before entering into a contract with a consumer for service,³ and also gives consumers 24 hours in which to cancel such service without penalty.⁴ In addition, section 642 requires greater transparency in electronic bills and prohibits MVPDs and providers of fixed broadband Internet access service from charging consumers for equipment they do not provide.⁵ Section 642 of the Act, as added by the TVPA, becomes effective June 20, 2020, six months after the date of enactment of the TVPA; however, the Commission for “good cause” may extend the effective date by six months.⁶ In this Public Notice, we seek comment on whether, pursuant to section 1004(b) of the TVPA, good cause exists for granting a blanket extension of section 642’s effective date by six months, until December 20, 2020. Parties advocating for a blanket extension should explain in

¹ The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA was enacted as Title X of the “Further Consolidated Appropriations Act, 2020” (H.R. 1865, 116th Cong.).

² See TVPA, § 1004(a) (to be codified at 47 U.S.C. § 562). Although the TVPA amended the Act in other respects, this Public Notice concerns only those amendments made by section 1004(a) of the TVPA.

³ See H.R. Rep. No. 116-329, 116th Cong., 1st Sess. 2019 at 4 (providing the relevant legislative history of the TVPA) (House Report). Section 642(a) of the Act, as added by section 1004(a) of the TVPA, indicates that information about fees and other charges can be provided by phone, in person, online, or by other reasonable means, and that a copy of this information must be sent to consumers by email, online link, or other reasonably comparable means not later than 24 hours after entering into a contract. TVPA, § 1004(a).

⁴ See House Report at 4.

⁵ *Id.*

⁶ See TVPA, § 1004(b) (“Section 642 of the [Act] . . . shall apply beginning on the date that is 6 months after the date of the enactment of this Act. The [Commission] may grant an additional 6-month extension if [it] finds that good cause exists for such . . . extension.”).

detail the bases for their assertion that the effective date should be so extended. For example, parties seeking an extension could describe the steps they need to undertake to update their billing systems in order to provide the required information to consumers, the time needed to implement such updates, and any associated employee training needed to fulfill the new requirements.

Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁷ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Public Notice. The IRFA is set forth in the Attachment.

Ex Parte Rules – Permit-But-Disclose. The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Filing Comments and Replies. All filings must be submitted in MB Docket No. 20-61. 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 the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy 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.

⁷ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, 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). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁸ 47 CFR §§ 1.1200 *et seq.*

- 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.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

People with Disabilities. 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 FCC's Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

For further information, contact Raelynn Remy, Raelynn.Remy@fcc.gov or (202) 418-2120.

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ATTACHMENT

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities from any rules that may result from the attached Public Notice. 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 provided on the first page of the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).¹⁰ In addition, the Public Notice and IRFA (or summaries thereof) will be published in the Federal Register.¹¹

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

2. In the attached Public Notice, we seek comment on whether, pursuant to section 1004(b) of the Television Viewer Protection Act of 2019 (TVPA),¹² good cause exists for granting a blanket extension of section 642's effective date by six months, until December 20, 2020. On December 20, 2019, Congress enacted the TVPA, which added section 642 to Title VI of the Communications Act of 1934, as amended (the Act).¹³ Section 642 requires multichannel video programming distributors (MVPDs) to "give consumers a breakdown of all charges related to the MVPD's video service" before entering into a contract with a consumer for service,¹⁴ and also gives consumers 24 hours in which to cancel such service without penalty.¹⁵ In addition, section 642 requires greater transparency in electronic bills and prohibits MVPDs and providers of fixed broadband Internet access service from charging consumers for equipment they do not provide.¹⁶ Section 642 of the Act, as added by the TVPA, becomes effective June 20, 2020, six months after the date of enactment of the TVPA; however, the Commission for "good cause" may extend the effective date by six months.¹⁷

⁹ 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). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

¹⁰ See 5 U.S.C. § 603(a).

¹¹ See *id.*

¹² The Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534 (2019). The TVPA was enacted as Title X of the "Further Consolidated Appropriations Act, 2020" (H.R. 1865, 116th Cong.).

¹³ See TVPA, § 1004(a) (to be codified at 47 U.S.C. § 562). Although the TVPA amended the Act in other respects, this Public Notice concerns only those amendments made by section 1004(a) of the TVPA.

¹⁴ See H.R. Rep. No. 116-329, 116th Cong., 1st Sess. 2019 at 4 (providing the relevant legislative history of the TVPA) (House Report). Section 642(a) of the Act, as added by section 1004(a) of the TVPA, indicates that information about fees and other charges can be provided by phone, in person, online, or by other reasonable means, and that a copy of this information must be sent to consumers by email, online link, or other reasonably comparable means not later than 24 hours after entering into a contract. TVPA, § 1004(a).

¹⁵ See House Report at 4.

¹⁶ *Id.*

¹⁷ See TVPA, § 1004(b) ("Section 642 of the [Act] . . . shall apply beginning on the date that is 6 months after the date of the enactment of this Act. The [Commission] may grant an additional 6-month extension if [it] finds that good cause exists for such . . . extension.").

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and section 1004 of the Television Viewer Protection Act of 2019.¹⁸

C. Description and Estimate of the Number of Small Entities To Which the Proposed 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 proposed rules, if adopted.¹⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²¹ 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.²² Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Cable Companies and Systems (Rate Regulation Standard)*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.²³ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²⁴ Industry data indicate that there are currently 4,392 active cable systems in the United States.²⁵ Of this total, 3,691 cable systems have fewer than 15,000 subscribers, and 701 systems have 15,000 or more.²⁶ Thus, we estimate that most cable systems are small entities.

6. *Cable System Operators (Telecommunications Act Standard)*. The Act also contains a size standard for a small cable system operator, 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

¹⁸ Pub. L. No. 116-94, § 1004, 133 Stat. 2534, 3198 (2019).

¹⁹ 5 U.S.C. § 603(b)(3).

²⁰ *Id.* § 601(6).

²¹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 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.” *Id.* § 601(3).

²² 15 U.S.C. § 632.

²³ 47 CFR § 76.901(d). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266 *et al.*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

²⁴ 47 CFR § 76.901(c).

²⁵ S&P Market Intelligence-MediaCensus data.

²⁶ *Id.*

\$250,000,000.”²⁷ There are approximately 49,011,210 cable video subscribers in the United States today.²⁸ Accordingly, an operator serving fewer than 490,112 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.²⁹ Based on available data, we find that all but five incumbent cable operators are small entities under this size standard.³⁰ 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. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

7. Most recent available data also indicate that there are 188 cable antenna relay service (CARS) licensees.³¹ The Commission, however, neither requests nor collects information on whether CARS licensees are affiliated with entities whose gross annual revenues exceed \$250 million. Although some CARS licensees may be affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of CARS licensees that would qualify as small cable operators under the definition in the Communications Act.

8. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.³² The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.³³ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,³⁴ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”³⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.³⁶ To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with fewer than 1,000 employees. Based on this data, the majority of these firms can be considered small.³⁷ In

²⁷ 47 U.S.C. § 543(m)(2); *see also* 47 CFR § 76.901(e).

²⁸ *See* SNL Kagan, *Multichannel Industry Benchmarks*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks> (last visited Jan. 14, 2020).

²⁹ *See* 47 CFR § 76.901(e).

³⁰ *See* SNL Kagan, *Top Cable MSOs*, <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/topCableMSOs> (last visited Jan. 14, 2020).

³¹ August 24, 2017, report from Media Bureau staff based on data contained in COALS, www.fcc.gov/coals.

³² *See* 47 U.S.C. § 573.

³³ 47 U.S.C. § 571(a)(3)-(4). *See 13th Annual Report*, 24 FCC Rcd at 606, para. 135.

³⁴ *See* 47 U.S.C. § 573.

³⁵ U.S. Census Bureau, 2012 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2012/def/ND517110.HTM#N517110>.

³⁶ 13 CFR § 201.121, NAICS code 517110 (2012).

³⁷ *See* U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

addition, we note that the Commission has certified some OVS operators, with some now providing service.³⁸ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.³⁹ 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, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service.⁴⁰ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

9. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, “Wired Telecommunications Carriers,”⁴¹ which was developed for small wireline firms.⁴² Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.⁴³ Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.⁴⁴

10. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber’s location. DBS is now included in SBA’s economic census category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers 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 combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including

³⁸ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

³⁹ See *13th Annual 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.

⁴⁰ See <http://www.fcc.gov/encyclopedia/current-filings-certification-open-video-systems> (current as of July 2012).

⁴¹ See 13 CFR § 121.201, NAICS code 517110 (2012).

⁴² Although SMATV systems often use DBS video programming as part of their service package to subscribers, they are not included in Section 340’s definition of “satellite carrier.” See 47 U.S.C. §§ 340(i)(1) and 338(k)(3); 17 U.S.C. § 119(d)(6).

⁴³ 13 CFR § 121.201, NAICS code 517110 (2012).

⁴⁴ U.S. Census Bureau, Table EC1251SSSZ5, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>.

VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁴⁵ The SBA determines that a wireline business is small if it has fewer than 1,500 employees.⁴⁶ Economic census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁴⁷ Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.⁴⁸ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that, in general, DBS service is provided only by large firms.

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”⁴⁹ 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.⁵⁰ Census data for 2012 show that there were 3,117 firms that operated that year.⁵¹ Of this total, 3,083 operated with fewer than 1,000 employees.⁵² Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *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 NAICS Code category is for Wired Telecommunications Carriers. Under that size standard,

⁴⁵ See U.S. Census Bureau, *2017 North American Industry Classifications System (NAICS) Definitions*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (2012 NAICS Definitions) (NAICS Code 517110).

⁴⁶ 13 CFR § 121.201 (2012) (NAICS Code 517110).

⁴⁷ See U.S. Census Bureau, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012; 2012 Economic Census of the United States* (Jan. 8, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴⁸ See *Communications Marketplace Report et al.*, GN Docket No. 18-231 et al., Report, FCC 18-131, 2018 WL 6839365, at *20, paras. 50-51 (Dec. 26, 2018).

⁴⁹ See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁵⁰ *Id.*

⁵¹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Tbl. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers)*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁵² *Id.*

such a business is small if it has 1,500 or fewer employees.⁵³ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁵⁴ The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by our actions in this proceeding.

13. *Incumbent Local Exchange Carriers (incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁵ According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁵⁶ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions in this proceeding. A total of 1,307 entities reported that they were incumbent local exchange service providers.⁵⁷ Of this total, an estimated 1,006 have 1,500 or fewer employees.⁵⁸

14. *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 NAICS Code category is Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁵⁹ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. 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.⁶⁰ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. 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.⁶¹ Moreover, 72 carriers

⁵³ See 13 CFR § 120.201, NAICS Code 517311.

⁵⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Tbl. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁵⁵ See 13 CFR § 120.201, NAICS Code 517311.

⁵⁶ U.S. Census Bureau, *2012 Economic Census of the United States*, Tbl. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁵⁷ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*).

⁵⁸ *Id.*

⁵⁹ U.S. Census Bureau, *2012 Economic Census of the United States*, Tbl. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁶⁰ See *Trends in Telephone Service* at Tbl. 5.3.

⁶¹ *Id.*

have reported that they are Other Local Service Providers.⁶² Of this total, 70 have 1,500 or fewer employees.⁶³ 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 our actions in this proceeding.

15. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”⁶⁴ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.⁶⁵ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

16. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁶⁶ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁶⁷ Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁶⁸ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our actions in this proceeding.

17. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator 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.⁶⁹ According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.⁷⁰ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our actions in this proceeding.

18. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 5 U.S.C. § 601(3).

⁶⁵ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

⁶⁶ 13 CFR § 121.201, NAICS Code 517311.

⁶⁷ See *Trends in Telephone Service* at Tbl. 5.3.

⁶⁸ *Id.*

⁶⁹ 13 CFR § 121.201, NAICS Code 517311.

⁷⁰ *Trends in Telephone Service* at Tbl. 5.3.

not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁷¹ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁷² Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by our actions in this proceeding.

19. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.⁷³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.⁷⁴ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed 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) services.⁷⁵ Of this total, an estimated 261 have 1,500 or fewer employees.⁷⁶ Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

20. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 2016, there were 280 Cellular licensees that could be affected by our actions in this proceeding.⁷⁷ The Commission does not know how many of these licensees are small, as it does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony

⁷¹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Tbl. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁷² *Trends in Telephone Service* at Tbl. 5.3.

⁷³ NAICS Code 517210. See <https://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#>.

⁷⁴ 2012 U.S. Economic Census, NAICS Code 517210, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁷⁵ See *Trends in Telephone Service* at Tbl. 5.3.

⁷⁶ *Id.*

⁷⁷ See <http://wireless.fcc.gov/uls>. For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

services.⁷⁸ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.⁷⁹ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

21. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission has defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁸⁰ The SBA has approved these definitions.⁸¹

22. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)⁸² and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.⁸³ For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.⁸⁴ Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1000 employees or more.⁸⁵ Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁸⁶ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.⁸⁷

23. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three

⁷⁸ See *Trends in Telephone Service* at Tbl. 5.3.

⁷⁹ See *id.*

⁸⁰ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

⁸¹ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

⁸² 13 CFR § 121.201, NAICS code 517210.

⁸³ *Id.*

⁸⁴ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

⁸⁵ *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 “1000 employees or more.”

⁸⁶ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁸⁷ *Id.*

previous calendar years.⁸⁸ For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁸⁹ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁹⁰ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.⁹¹ On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.⁹² Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

24. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.⁹³ Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.⁹⁴ On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.⁹⁵ Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.⁹⁶ On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.⁹⁷ Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.⁹⁸

25. *Specialized Mobile Radio Licenses.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar

⁸⁸ See *Amendment of Parts 20 and 24 of the Commission’s Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission’s Cellular/PCS Cross-Ownership Rule*, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (*PCS Report and Order*); see also 47 CFR § 24.720(b).

⁸⁹ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

⁹⁰ See *Alvarez Letter 1998*.

⁹¹ See *Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (Jan. 14, 1997).

⁹² See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Fourth Report and Order, 13 FCC Rcd 15743, 15768, para. 46 (1998).

⁹³ See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

⁹⁴ See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

⁹⁵ See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

⁹⁶ *Id.*

years.⁹⁹ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.¹⁰⁰ The SBA has approved these small business size standards for the 900 MHz Service.¹⁰¹ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.¹⁰² A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.¹⁰³

26. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the \$15 million size standard.¹⁰⁴ In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.¹⁰⁵ Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

27. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard.¹⁰⁶ We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

28. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for
(Continued from previous page) _____

⁹⁷ See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

⁹⁸ *Id.*

⁹⁹ 47 CFR § 90.814(b)(1).

¹⁰⁰ *Id.*

¹⁰¹ See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (filed Aug. 10, 1999) (*Alvarez Letter 1999*).

¹⁰² See *Correction to Public Notice DA 96-586 “FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,”* Public Notice, 18 FCC Rcd 18367 (WTB 1996).

¹⁰³ See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

¹⁰⁴ See *800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (2000).

¹⁰⁵ See *800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (2000).

¹⁰⁶ See generally 13 CFR § 121.201; NAICS Code 517210.

defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.¹⁰⁷ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹⁰⁸ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹⁰⁹ Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—“entrepreneur”—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹¹⁰ The SBA approved these small size standards.¹¹¹ An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.¹¹² A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.¹¹³ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹¹⁴ On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

29. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.¹¹⁵ An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block.¹¹⁶ Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) won 325 licenses.

30. *Upper 700 MHz Band Licenses*. In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses.¹¹⁷ On January 24, 2008, the

¹⁰⁷ See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002).

¹⁰⁸ See *id.* at 1087-88, para. 172.

¹⁰⁹ See *id.*

¹¹⁰ See *id.* at 1088, para. 173.

¹¹¹ See *Alvarez Letter 1999*.

¹¹² See *Lower 700 MHz Band Auction Closes*, Public Notice, 17 FCC Rcd 17272 (WTB 2002).

¹¹³ See *id.*

¹¹⁴ See *id.*

¹¹⁵ *Service Rules for the 698-746, 747-762 and 777-792 MHz Band et al.*, Second Report and Order, 22 FCC Rcd 15289, 15359 n. 434 (2007) (*700 MHz Second Report and Order*).

¹¹⁶ See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

¹¹⁷ *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.¹¹⁸ The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

31. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹¹⁹ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹²⁰ Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹²¹ SBA approval of these definitions is not required.¹²² An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000.¹²³ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹²⁴

32. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹²⁵ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.¹²⁶ A “very small business” is defined as an entity that, together

¹¹⁸ See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

¹¹⁹ See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000).

¹²⁰ See *id.* at 5343, para. 108.

¹²¹ See *id.*

¹²² See *id.* at 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

¹²³ See *700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (WTB 2000).

¹²⁴ See *700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (WTB 2001).

¹²⁵ 13 CFR § 121.201, NAICS Codes 517210.

¹²⁶ *Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28-42 (2005).

with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.¹²⁷ These definitions were approved by the SBA.¹²⁸ In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

33. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)).* For the AWS-1 bands,¹²⁹ the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS-2 and AWS-3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.¹³⁰

34. *Fixed Microwave Services.* Microwave services include common carrier,¹³¹ private-operational fixed,¹³² and broadcast auxiliary radio services.¹³³ They also include the Upper Microwave Flexible Use Service,¹³⁴ Millimeter Wave Service,¹³⁵ Local Multipoint Distribution Service (LMDS),¹³⁶ the Digital Electronic Message Service (DEMS),¹³⁷ and the 24 GHz Service,¹³⁸ where licensees can choose between common carrier and non-common carrier status.¹³⁹ At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz

¹²⁷ *Id.*

¹²⁸ See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, FCC (filed Sept. 19, 2005).

¹²⁹ The service is defined in section 90.1301 *et seq.* of the Commission’s Rules, 47 CFR § 90.1301 *et seq.*

¹³⁰ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, Appx. B (2003), modified by *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058, Appx. C (2005); *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, Appx. B (2005); *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, Appx. (2007).

¹³¹ See 47 CFR Part 101, Subparts C and I.

¹³² *Id.*, Subparts C and H.

¹³³ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹³⁴ See 47 CFR Part 30.

licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services.¹⁴⁰ The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.¹⁴¹ For this industry, U.S. Census data for 2012 shows that there were 967 firms that operated for the entire year.¹⁴² Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.¹⁴³ Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

35. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).¹⁴⁴ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹⁴⁵ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.¹⁴⁶

(Continued from previous page) _____

¹³⁵ See 47 CFR Part 101, Subpart Q.

¹³⁶ See 47 CFR Part 101, Subpart L.

¹³⁷ See 47 CFR Part 101, Subpart G.

¹³⁸ See *id.*

¹³⁹ See 47 CFR §§ 101.533, 101.1017.

¹⁴⁰ These statistics are based on a review of the Universal Licensing System on September 22, 2015.

¹⁴¹ See 13 CFR § 121.201, NAICS code 517210.

¹⁴² U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series, “Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

¹⁴³ *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 “1000 employees or more.”

¹⁴⁴ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

¹⁴⁵ 47 CFR § 21.961(b)(1).

¹⁴⁶ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1500 or fewer employees.

After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

36. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.¹⁴⁷ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.¹⁴⁸ Auction 86 concluded in 2009 with the sale of 61 licenses.¹⁴⁹ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

37. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. Both categories have a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.¹⁵⁰

38. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹⁵¹ The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.¹⁵² For this category, Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.¹⁵³ Of this total, 299 firms had annual receipts of less than \$25 million.¹⁵⁴ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

39. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: “This U.S. industry is comprised of establishments that are primarily engaged in providing specialized

¹⁴⁷ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

¹⁴⁸ *Id.* at 8296, para. 73.

¹⁴⁹ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

¹⁵⁰ 13 CFR § 121.201, NAICS Code 517410.

¹⁵¹ U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications,” <http://www.census.gov/naics/2007/def/ND517410.HTM>.

¹⁵² 13 CFR § 121.201, NAICS Code 517410.

¹⁵³ U.S. Census Bureau, 2012 *Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS Code 517410 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹⁵⁴ *Id.*

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.”¹⁵⁵ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.¹⁵⁶ For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million.¹⁵⁷ Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

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

40. The Public Notice does not propose to adopt any reporting or recordkeeping requirements, but instead seeks comment on whether to grant a blanket extension of time to come into compliance with certain statutory requirements. Specifically, it seeks comment on whether, pursuant to section 1004(b) of the TVPA, good cause exists for granting a blanket extension of section 642’s effective date by six months, until December 20, 2020.

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

41. 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 and reporting requirements under the rule for such 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.”¹⁵⁸

42. The Public Notice seeks comment on whether, pursuant to section 1004(b) of the TVPA, good cause exists for granting a blanket extension of section 642’s effective date by six months, until December 20, 2020. Section 642 requires MVPDs to “give consumers a breakdown of all charges related to the MVPD’s video service” before entering into a contract with a consumer for service, and also gives consumers 24 hours in which to cancel such service without penalty. In addition, section 642 requires greater transparency in electronic bills and prohibits MVPDs and providers of fixed broadband Internet access service from charging consumers for equipment they do not provide. Section 642 of the Act, as added by the TVPA, becomes effective June 20, 2020, six months after the date of enactment of the TVPA; however, the Commission for “good cause” may extend the effective date by six months. The

¹⁵⁵ NAICS Code 517919; <https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6>.

¹⁵⁶ 13 CFR § 121.201, NAICS Code 517919.

¹⁵⁷ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC0751SSSZ1, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table.

¹⁵⁸ 5 U.S.C. § 603(c)(1)-(c)(4).

Commission will consider the record in response to the Public Notice in determining whether there is good cause for a blanket extension, and the Public Notice indicates that parties advocating for a blanket extension, including small entities, should explain in detail the bases for their assertion that the effective date should be so extended. The Public Notice notes that, for example, parties seeking an extension could describe the steps they need to undertake to update their billing systems in order to provide the required information to consumers, the time needed to implement such updates, and any associated employee training needed to fulfill the new requirements. Extending the effective date of section 642 could reduce the economic impact of that provision by affording affected small entities additional time to come into compliance with the requirements set forth therein. We invite comment on the economic impact of our proposals on small entities, and on how the Commission could minimize any potential burdens on such entities.

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

43. None.