

**FCC FACT SHEET**\*

**Nationwide Number Portability**

Report and Order – WC Docket No. 17-244

**Background:** Achieving nationwide number portability (NNP) will require us to update rules written for older market structures that may stand in the way of NNP. By eliminating certain regulatory requirements, and easing others, we can ensure that carriers have the flexibility they need to adapt their networks to future numbering and call routing regimes.

**What the Report and Order Would Do:**

- Eliminate outdated regulations that the Alliance for Telecommunications Industry Solutions has identified as barriers to full NNP.
  - Extend forbearance from the interexchange dialing parity requirement to all carriers, and not just the incumbent local exchange carriers that received such forbearance in 2015.
  - Amend the N-1 rule, which requires the second-to-last carrier in a call flow to query the number portability database, to allow for alternative voluntary arrangements, such as allowing the carrier originating a call to conduct the query.

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\* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 17-244, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §1.1200 *et seq.*

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

In the Matter of )
)
Nationwide Number Portability ) WC Docket No. 17-244
)
Numbering Policies for Modern Communications ) WC Docket No. 13-97

REPORT AND ORDER\*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. The systems we use to make and route telephone calls are changing. With this Report and Order (Order), we set the stage for more efficient use of the telecommunications network and pave the way for nationwide number portability (NNP). We eliminate rules that were intended for a market that was divided along more static, segmented categories of telecommunications providers. Those rules are far less applicable to today’s more integrated providers and pricing plans, and the North American Numbering Council has identified them as barriers to the achievement of NNP.

2. We forbear from the interexchange dialing parity requirements for competitive local exchange carriers (LECs), creating a more level playing field with the incumbent LECs who received forbearance from the interexchange dialing parity obligations in 2015, and ensuring that both categories of LECs will be able to route calls more efficiently in a future NNP environment.1 We also ease the requirement that the second-to-last carrier handling a call request query the local number portability database, allowing any carriers earlier in the chain to make the query if they so choose. This greater flexibility allows carriers in the call path to determine who is best placed to bear the costs of performing the query, and also ensures that any carrier—including originating carriers—can perform the query, a necessary step in certain NNP solutions.

\* This document has been circulated for tentative consideration by the Commission at its July 2018 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al., Memorandum Opinion and Order, 31 FCC Rcd 6157 (2015) (2015 USTelecom Forbearance Order).

3. These changes will help set the stage for further progress towards implementation of number portability on a nationwide basis. The North American Numbering Council<sup>2</sup> recently approved a report issued by its Nationwide Number Portability Issues Working Group,<sup>3</sup> which builds upon and refines earlier industry and NANC work, and recommends further inquiry and analysis on several specific questions to further explore NNP. We anticipate that the NANC will continue to assist the Commission in investigating these options and considerations.

## II. BACKGROUND

4. *Interexchange dialing parity requirements.* Dialing parity provisions were originally intended to ensure that incumbent LECs provided the same access to stand-alone long-distance service providers as they did to their own or their affiliates' long-distance offerings.<sup>4</sup> These requirements grew out of the equal access requirements included in the 1982 *Modification of Final Judgment* in the federal antitrust case against AT&T, which imposed these requirements on the Bell Operating Companies (BOCs).<sup>5</sup> The Telecommunications Act of 1996 (1996 Act) incorporated the MFJ's equal access requirements for these former BOCs into the Communications Act (the Act) via section 251(g).<sup>6</sup> The 1996 Act also created more specific, affirmative equal access requirements in section 251(b) that applied to all LECs.<sup>7</sup>

5. In the *2015 USTelecom Forbearance Order*, the Commission forbore from the "application to incumbent LECs of all remaining equal access and dialing parity requirements for interexchange services, including those under section 251(g) and section 251(b)(3) of the Act."<sup>8</sup> As we observed in the NPRM, this forbearance was well supported by the lessening need for the rules, as stand-alone long-distance services had declined, all-distance calling was growing more prevalent, and consumers were being offered yet more choices in voice service, including increasing growth in interconnected Voice over Internet Protocol (VoIP) services.<sup>9</sup> The *2015 USTelecom Forbearance Order* left a limited number of toll dialing parity requirements in place, however, primarily for competitive LECs,<sup>10</sup> and for certain customers of incumbent LECs who were then already presubscribed to third-party long-distance services at the time of the Order.<sup>11</sup>

6. *N-1 Requirement.* The N-1 query requirement mandates that the carrier immediately preceding the terminating carrier (the N-1 carrier) be responsible for ensuring that the local number

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<sup>2</sup> The North American Numbering Council (NANC) is a federal advisory committee to the Commission, providing guidance and recommendations on numbering policy and operations affecting the 20 countries and territories comprising the North American Numbering Plan.

<sup>3</sup> North American Numbering Council, Nationwide Number Portability Issues Working Group, Report on Findings related to ATIS Models on Nationwide Number Portability (2018), [http://www.nanc-chair.org/docs/mtg\\_docs/Jun18\\_NANC\\_NNP\\_Report\\_Final.pdf](http://www.nanc-chair.org/docs/mtg_docs/Jun18_NANC_NNP_Report_Final.pdf) (2018 NANC NNP Report).

<sup>4</sup> See generally *Nationwide Number Portability and Numbering Policies for Modern Communications*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 8034 (2017) (*NNP NPRM*); see also *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6183-84, para. 47.

<sup>5</sup> See *United States v. Western Elec. Co.*, No. 82-0192 at 3-4 (D.D.C. Aug. 24, 1982) (1982 Modification of Final Judgment, or MFJ). See also generally *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982).

<sup>6</sup> 47 U.S.C. § 251(g).

<sup>7</sup> 47 U.S.C. § 251(b); see also *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6184, para. 48.

<sup>8</sup> *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6182, para 46.

<sup>9</sup> *NNP NPRM*, 32 FCC Rcd at 8043-44, paras. 27-31; *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6184-87, para. 49-51.

<sup>10</sup> See 47 CFR §§ 51.209, 51.213, 51.215 (toll dialing parity requirements).

<sup>11</sup> *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6187-89, paras. 52-54.

portability database – the Number Portability Administration Center/Service Management System (NPAC/SMS) – is queried.<sup>12</sup> This requirement is specified in the North American Numbering Council’s<sup>13</sup> Architecture and Administrative Plan for Local Number Portability,<sup>14</sup> which is in turn incorporated by reference in section 52.26(a) of the Commission’s rules.<sup>15</sup> The rule was put in place in part to ensure that the costs of querying the database could be split between originating and interexchange carriers, while ensuring that calls would not be left unqueried.<sup>16</sup> The rule also allowed local number portability to proceed without requiring all carriers across the country to implement it simultaneously.<sup>17</sup>

7. *NNP Notice of Proposed Rulemaking.* In 2017, the Commission released the *NNP NPRM* seeking comment on a proposal to forbear from the remaining interexchange dialing parity requirements of the Act,<sup>18</sup> as well as a proposal to eliminate the rules implementing those requirements.<sup>19</sup> We also sought comment on whether we should extend forbearance from the dialing parity requirements to customers with pre-existing stand-alone long-distance carriers, whose plans had been grandfathered in the *2015 USTelecom Forbearance Order*.<sup>20</sup> We also sought comment on a proposal to eliminate the N-1 requirement for call routing.<sup>21</sup> The *NNP NPRM* generated significant interest from numbering database administrators, trade associations, and service providers, representing the views of incumbent and competitive LECs, interexchange carriers, and carriers who provide both services. We received 21 comments and 11 reply comments in the record in response.

### III. DISCUSSION

8. In this Order, we expand the scope of the forbearance issued in the *2015 USTelecom Forbearance Order*. While that earlier order forbore from applying the dialing parity requirements of the Act to incumbent LECs, the requirements remained in place for competitive LECs, and also for a limited number of customers who were still presubscribed to stand-alone long-distance plans. This order removes that disparity by applying the forbearance to these formerly excluded categories. We also ease the N-1 query requirement to ensure that it does not prevent originating carriers, or other carriers earlier than the N-1 carrier in a call flow, from performing the number portability query if they wish.

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<sup>12</sup> 47 CFR § 52.26(a); *see also Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281, 12323, para. 73 (1997) (*Second Number Portability Order*); *NNP NPRM*, 32 FCC Rcd at 8039-40, paras. 14-15.

<sup>13</sup> The North American Numbering Council (NANC) is the Commission’s Federal Advisory Committee on number administration matters.

<sup>14</sup> NANC–LNP Architecture Task Force, Architecture & Administrative Plan for Local Number Portability at 8 (rel. Apr. 23, 1997) (*NANC Architecture Report*), <https://docs.fcc.gov/public/attachments/DOC-341177A1.pdf>. The *NANC Architecture Report* is Appendix D of the April 25, 1997 NANC working group report on local number portability administration selection, which is referred to in 47 CFR 52.26 as the *Working Group Report*.

<sup>15</sup> 47 CFR § 52.26(a). We note that section 52.26(c) of our Rules provides a website at which the *NANC Architecture Report* and *Working Group Report* should be available. This Order updates that link. This simple revision, reflecting the new location of the reports, does not require notice and comment. 5 U.S.C. § 553(b).

<sup>16</sup> *See Second Number Portability Order*, 12 FCC Rcd at 12323-24, paras. 73-74; *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236,7306-08, paras. 124-126 (Mar. 11, 1997).

<sup>17</sup> *See Telephone Number Portability, Notice of Proposed Rulemaking*, 10 FCC Rcd 12350, 12365-66, paras. 43-47, (1995); Cincinnati Bell Comments, CC Docket No. 95-116, at 8 (Sep. 12, 1995); NCTA Comments, CC Docket No. 95-116, at 10 (Sep. 12, 1995).

<sup>18</sup> *NNP NPRM*, 32 FCC Rcd at 8042-45, paras. 26-32.

<sup>19</sup> *NNP NPRM*, 32 FCC Rcd at 8045-46, paras. 35-36.

<sup>20</sup> *NNP NPRM*, 32 FCC Rcd at 8045, paras. 33-34

<sup>21</sup> *NNP NPRM*, 32 FCC Rcd at 8041-42, paras. 20-24.

Originating carriers, or parties they contract with, should be able to perform these queries, but if they do not, the responsibility for the query continues to fall upon the N-1 carrier. This change to our rules will allow carriers to have the routing flexibility necessary for certain types of NNP.

9. As explained in the *NNP NPRM*, our legal authority stems directly from section 251(e)(1) of the Communications Act, which gives the Commission “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States” and provides that numbers must be made “available on an equitable basis.”<sup>22</sup> The rule changes addressed in this Order fall squarely within this jurisdiction. In addition, section 10 of the Act states that the Commission shall forbear from applying any regulation or provision of the Act if it determines that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>23</sup> As discussed below, our forbearance from the remaining toll interexchange dialing parity requirements meets these criteria.

**A. Forbearance from Toll Interexchange Dialing Parity Requirement and Elimination of Implementing Rules**

10. *Forbearance from Interexchange Dialing Parity Provisions for Competitive LECs.* In the *NNP NPRM*, we noted that the same rationales of the *2015 USTelecom Forbearance Order* seemed to apply to the toll interexchange dialing parity requirements that remained in place for competitive LECs.<sup>24</sup> We sought comment on whether these mandates, located in section 251(b)(3), served any purpose. The overwhelming consensus in the record is that they do not.<sup>25</sup> Wireline customers have more choices, and stand-alone long-distance service is indeed less prevalent and significant than it was in decades past.<sup>26</sup> Customers for wireline voice services have more choices than they did in the past, including interconnected VoIP from both facilities-based and over-the-top providers.<sup>27</sup> For example, the most recent Voice Telephone Services Report shows that interconnected VoIP subscriptions increased at a compound annual growth rate of 10 percent, while retail switched access lines declined at 12 percent per year from 2013 to 2016.<sup>28</sup> These findings, indicate increased options for consumers besides switched access, regardless of whether they may currently be served by a competitive or an incumbent LEC. The *NNP NPRM* sought comment on whether forbearance from these provisions would affect competitive LECs or their customers. No comments in the record indicate that the remaining dialing parity provisions

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<sup>22</sup> 47 U.S.C. § 251(e)(1).

<sup>23</sup> 47 U.S.C. §160(a).

<sup>24</sup> *NNP NPRM*, 32 FCC Rcd at 8043, paras. 26-27.

<sup>25</sup> See, e.g., WTA Comments at 7; CenturyLink Comments at 2; Comcast Comments at 2-3; Neustar Comments at 11-12; GCI Comments at 13-14; Incompas Comments at 1-2,4; USTelecom Comments at 3-4; Cincinnati Bell Comments at 5-6; Charter Reply Comments at 6; NCTA Reply Comments at 2.

<sup>26</sup> *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6184-85, para. 49.

<sup>27</sup> *Id.* See also *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, et al.*, WC Docket No. 12-61, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7637, para. 14 (2013).

<sup>28</sup> FCC, Voice Telephone Services: Status as of December 31, 2016 at 2 (2018), <https://www.fcc.gov/voice-telephone-services-report>. This represents a continuing trend. See, e.g. FCC, Local Telephone Competition: Status as of December 31, 2013 at 1-2 (2014), <https://docs.fcc.gov/public/attachments/DOC-329975A1.pdf> (showing interconnected VoIP subscriptions increasing at a compound annual growth rate of 15 percent and retail switched access declining at 10 percent a year from December 2010 to December 2013).

for competitive LECs aid competition, ensure just and reasonable practices, or prevent unjust or unreasonable discrimination. No comments in the record indicate customer complaints stemming from the 2015 forbearance from these requirements for incumbent LECs, and commenters likewise did not disagree with our finding that extending the forbearance to competitive LECs would produce similarly benign results.

11. We therefore find that enforcement of the section 251(b)(3) dialing parity requirements for competitive LECs is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with a telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory. Nor is their enforcement necessary for the protection of consumers, since consumers can leave their competitive LEC for non-switched access services if that LEC makes choosing a separate long-distance provider difficult. As described in the *2015 USTelecom Forbearance Order*, wireline customers today have more choices than they did in 1982 or 1996, including interconnected VoIP services.<sup>29</sup> Similarly, demand for stand-alone long-distance has continued to decline for both mass-market and business customers.<sup>30</sup>

12. Extending to competitive LECs the forbearance granted in 2015 to incumbent LECs also promotes fairness in the application and enforcement of these requirements that would otherwise be lacking.<sup>31</sup> Furthermore, forbearing from a requirement that no longer serves its purpose promotes the public interest by reducing the costs of regulatory compliance. We therefore find that forbearing from the dialing parity requirements of section 251(b)(3) serves the public interest.

13. USTelecom notes that extending this forbearance to competitive LECs is not sufficient to achieve NNP.<sup>32</sup> NNP is naturally a multi-stage process requiring a series of changes to various aspects of policy and possible other rules.<sup>33</sup> We recognize this, but as many commenters have pointed out, the stage for NNP can be set incrementally, while forbearing from unnecessary requirements in the interim.<sup>34</sup> As noted in the *NNP NPRM*, forbearing from these requirements could allow for more efficient routing than would otherwise be possible under a number of NNP models.<sup>35</sup> USTelecom itself notes, eliminating an unnecessary requirement may increase regulatory flexibility and make a wider range of solutions possible in the future.<sup>36</sup>

14. *Grandfathered dialing parity requirements.* The *NNP NPRM* also sought comment on eliminating the dialing parity requirements that had been “grandfathered” after the adoption of the *2015 USTelecom Forbearance Order*.<sup>37</sup> We find that the number of customers with grandfathered stand-alone long-distance plans continues to decline, and thus extending forbearance from the dialing parity requirements to these plans, as well will further encourage NNP.<sup>38</sup> In the interest of maintaining a level

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<sup>29</sup> *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6184-85, para. 49.

<sup>30</sup> *Id.*

<sup>31</sup> See WTA Comments at 7; GCI Comments at 13-14; Incompas Comments at 4.

<sup>32</sup> USTelecom Comments at 4.

<sup>33</sup> See, e.g., *2018 NANC NNP Report*; Alliance for Telecomm. Indus. Sols., ATIS Standard –ATIS-1000071, Technical Report on a Nationwide Number Portability Study, Technical Report (2016).  
[https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-340865A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-340865A1.pdf) (*2016 ATIS NNP Report*).

<sup>34</sup> See, e.g., Verizon Comments at 3-4.

<sup>35</sup> *NNP NPRM*, 32 FCC Rcd at 8044, para 29.

<sup>36</sup> USTelecom Comments at 4.

<sup>37</sup> *NNP NPRM*, 32 FCC Rcd at 8045, paras. 33-34.

<sup>38</sup> See WTA Comments at 7; ITTA Comments at 10.

playing field,<sup>39</sup> forbearance applies to all customers. Thus, neither incumbent nor competitive LECs are required to abide by the toll dialing parity requirements for customers who have preexisting stand-alone long-distance plans.

15. WTA and ITTA both note that the same factors that spurred forbearance from the dialing parity requirements in the *2015 USTelecom Forbearance Order* apply even more prominently now: the stand-alone long-distance market remains small, and the number of preexisting plans among incumbent LEC customers will only have fallen since 2015.<sup>40</sup> There is no evidence in the record to indicate that the trends observed in the *2015 USTelecom Forbearance Order* have slowed or reversed course.

16. Although GCI and Aureon argue that the Commission should maintain the exemption from forbearance for preexisting plans in more rural areas, we find the decline in the total number of these plans and our need to modernize our systems to allow for NNP are compelling reasons to extend forbearance.<sup>41</sup> We recognize that there are a limited number of interexchange carriers in parts of Alaska and Iowa<sup>42</sup> and, in certain cases, the incumbent LEC remains the only option for voice service.<sup>43</sup> We must, however, take these first steps to eliminate outdated and rarely-used regulations if we are to realize the consumer and competitive benefits of NNP.

17. This Order also does not affect the applicability of section 258(a)<sup>44</sup> or our slamming rules,<sup>45</sup> as GCI argues.<sup>46</sup> Those provisions continue to operate to prevent incumbent LECs from changing subscribers' selections of other providers without following the necessary verification procedures. While the *2015 USTelecom Forbearance Order* expressed concern that forbearance from equal access requirements might allow increased pressure from incumbent LECs, it did not presume to forbear from section 258, and we do not so presume now.<sup>47</sup> Those anti-slaming provisions continue to operate as before, and will continue to be enforced.

18. *Eliminating toll dialing parity rules.* The *NNP NPRM* also sought comment on eliminating the Commission's toll dialing parity rules promulgated under section 251(b)(3).<sup>48</sup> No commenters found any reason for these rules to stay in place while we forbear from the interexchange dialing parity requirements of section 251(b)(3). We agree that in light of our decision to forbear from section 251(b)(3), there is no sound justification to retain these rules. Therefore, to eliminate any possible confusion and to streamline the Commission's rules, we therefore eliminate those provisions.

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<sup>39</sup> Cf. GCI Comments at 14-15.

<sup>40</sup> WTA Comments at 7; ITTA Comments at 10.

<sup>41</sup> GCI Comments at 6-9; GCI Reply Comments at 2-4; Aureon Reply Comments at 6-8. NCTA also cautions that we should take GCI's arguments into account; see NCTA Comments at 2-3, n.8.

<sup>42</sup> GCI Comments at 6-9; GCI Reply Comments at 2-4; Aureon Comments at 6-7.

<sup>43</sup> GCI Comments at 6.

<sup>44</sup> 47 U.S.C. § 258(a). Section 258(a) prohibits carriers from changing a subscriber's choice of exchange service without going through the proper verification procedures. It also explicitly permits state regulators to enforce anti-slaming provisions.

<sup>45</sup> 47 CFR §§ 64.1100 *et seq.*

<sup>46</sup> See GCI Comments 7-8.

<sup>47</sup> *2015 USTelecom Forbearance Order*, 31 FCC Rcd at 6188, para. 53.

<sup>48</sup> *NNP NPRM*, 32 FCC Rcd at 8045-46, paras. 35-36; see also 47 CFR §§ 51.209, 51.213, 51.215.

## B. Allowing Alternatives to N-1 Call Routing

19. The *NNP NPRM* proposed eliminating the N-1 requirement, since it may lead to unnecessary and inefficient routing of calls in an NNP environment.<sup>49</sup> However, as anticipated when it was adopted,<sup>50</sup> and as noted in the record,<sup>51</sup> standardization around having the N-1 carrier perform the number portability database query has allowed for more uniformity and prevented confusion. In the interest of providing flexibility for anticipated changes to the number porting system, while preserving the certainty and stability of existing systems, we ease, but do not eliminate, the rule.

20. We noted in the *NNP NPRM* that preventing queries by the originating carrier could lead to inefficiencies, and that some reports had indicated that eliminating the N-1 rule would be beneficial.<sup>52</sup> However, we are persuaded by the record that carriers will benefit from the certainty of having a default rule that clearly names a responsible party in the absence of an agreement otherwise. We therefore amend our rules to allow upstream carriers to perform number portability database queries, but require the N-1 carriers to perform the queries if the upstream carriers have not.<sup>53</sup>

21. The *NANC Architecture Report* states that an N-1 carrier “is responsible for ensuring queries are performed on an N-1 basis.”<sup>54</sup> However, as we have noted, requiring the N-1 carrier to perform the query can lead to inefficiencies in call routing in an NNP environment.<sup>55</sup> Neustar, Incompas, the Voice on the Net Coalition (VON Coalition), and Charter all agree that the N-1 requirement is no longer necessary and urge the Commission to eliminate it to prevent the possible routing complications that could come with NNP.<sup>56</sup> Neustar further points out that the N-1 requirement actually provides little distinction for most calls, since few consumers have an interexchange carrier that is different from their originating (local) provider.<sup>57</sup> In those situations, the N-1 carrier is the originating carrier, meaning that the N-1 requirement is unnecessary. NCTA and Comcast suggest waiting to eliminate the rule until after transition to the new Number Portability Administration Center has occurred,<sup>58</sup> a process that is now complete.<sup>59</sup>

22. Many other commenters urge more caution, however, noting that elimination of the rule without some specification about who must perform the query could lead to confusion and possible call completion issues.<sup>60</sup> Others disagree.<sup>61</sup> In light of the record, we believe it best to chart a middle course:

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<sup>49</sup> *NNP NPRM*, 32 FCC Rcd at 8041-42, paras. 20-22.

<sup>50</sup> *Second Number Portability Order*, 12 FCC Rcd at 12323-24, paras. 73-74.

<sup>51</sup> See, e.g., iconectiv Comments at 5; Comcast Comments at 4; ATIS Comments at 4-5; AT&T Comments at 2-4.

<sup>52</sup> *NNP NPRM*, 32 FCC Rcd at 8041-42, paras. 21-23.

<sup>53</sup> See *infra* Appx. A (amending 47 CFR §52.26(a)).

<sup>54</sup> *NANC Architecture Report* at para. 7.8.

<sup>55</sup> See *NNP NPRM*, 32 FCC Rcd at 8039-40, para. 15 (describing how calls can be sent to an interexchange carrier unnecessarily based upon the dialed number suggesting a long-distance call, when the customer has actually ported that number to the same area as the calling party, requiring an inefficient round-trip routing); *2016 ATIS NNP Report* at 23.

<sup>56</sup> Neustar Comments at 12; Incompas Comments at 2-4; VON Comments at 2; Charter Reply Comments at 5-6.

<sup>57</sup> Neustar Comments at 12-13.

<sup>58</sup> NCTA Reply Comments at 3; Comcast Comments at 2.

<sup>59</sup> Press Release, FCC, FCC Announces Successful Transition to New Administrator for Number Porting System, (May 29, 2018), <https://www.fcc.gov/document/fcc-welcomes-successful-transition-new-number-porting-administrator>.

<sup>60</sup> See, e.g., ATIS Comments at 4-5; Comcast Comments at 4; NTCA Reply Comments at 2; CenturyLink Comments at 4.

We eliminate any requirement that would prevent an upstream carrier from voluntarily making queries rather than the N-1 carrier. In other words, we revise the N-1 rule as a default in the absence of other agreements. This revision accords with CenturyLink and iconectiv's interpretation of the *NANC Architecture Report* that the current rule for N-1 queries operates as a default rule.<sup>62</sup> Although we disagree with those commenters and find a change is necessary, the result gives carriers the flexibility to efficiently route calls in an NNP environment.

23. Retaining the N-1 rule as a backstop also addresses commenters' concerns that eliminating the N-1 rule would effectively mandate originating carriers to perform queries, raising their costs due to increased querying and potential upgrades necessary to handle this increased volume.<sup>63</sup> Moreover, we permit, but do not require, originating carriers to make the database query. Should originating carriers decline to perform the number portability database query for interexchange calls, the rule will continue to require interexchange carriers to bear the cost of the query. Furthermore, the N-1 carrier will have fulfilled its responsibility to ensure the query is performed if *any* carrier preceding it in the call flow has already performed the query. While we anticipate that in NNP scenarios this will most likely be the originating carrier, the rule would not prevent other parties from performing the query as well. Therefore, we adjust the N-1 rule, eliminating section 52.26(a)'s incorporation by reference of the *NANC Architecture Report's* version of the rule and amending the rule to allow queries by carriers other than the N-1 carrier.

#### IV. PROCEDURAL MATTERS

24. *Final Regulatory Flexibility Act Analysis.*—Pursuant to the Regulatory Flexibility Act of 1980, as amended,<sup>64</sup> the Commission's Final Regulatory Flexibility Analysis for the *Order* is attached as Appendix B.

25. *Paperwork Reduction Act.*—This document does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

26. *Congressional Review Act.*—The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. § 801(a)(1)(A).

27. *Materials in Accessible Formats.*—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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

28. Additional Information. For additional information on this proceeding, contact Sherwin Siy, FCC Wireline Competition Bureau, Competition Policy Division, (202) 418-2783, [Sherwin.Siy@fcc.gov](mailto:Sherwin.Siy@fcc.gov).

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<sup>61</sup> Neustar Comments at 13.

<sup>62</sup> CenturyLink Comments at 3; iconectiv Comments at 5-6.

<sup>63</sup> *See, e.g.*, iconectiv Comments at 5-6; WTA Comments at 6; CenturyLink Comments at 3-4; ATIS Comments at 4; NTCA Reply Comments at 3-4.

<sup>64</sup> *See* 5 U.S.C. § 603.

**V. ORDERING CLAUSES**

29. **IT IS ORDERED**, pursuant to sections 1, 4(i), 10, 201(b), and 251(e) of the Communication Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 201(b), and 251(e) that this *Report and Order* **IS ADOPTED**.

30. **IT IS FURTHER ORDERED** that parts 51 and 52 of the Commission's rules, 47 CFR §§ 51.205, 51.209, 51.213, 51.215, 52.26 are amended as set forth in Appendix A, and that this amendment shall be effective 30 days after publication of this Report and Order in the Federal Register.

31. **IT IS FURTHER ORDERED** that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

The Federal Communications Commission amends parts 51 and 52 of Title 47 of the Code of Federal Regulations as follows:

**PART 51 — INTERCONNECTION**

1. Revise § 51.205 to read as follows:

**§ 51.205 Dialing parity: General.**

A local exchange carrier (LEC) shall provide local dialing parity to competing providers of telephone exchange service, with no unreasonable dialing delays. Dialing parity shall be provided for originating telecommunications services that require dialing to route a call.

2. Amend § 51.209 as follows:

**§ 51.209 [Removed]**

Remove § 51.209

3. Amend § 51.213 as follows:

**§ 51.213 [Removed]**

Remove § 51.213

4. Amend § 51.215 as follows:

**§ 51.215 [Removed]**

Remove § 51.215

**PART 52 — NUMBERING**

1. Revise § 52.26(a) to read as follows:

(a) Local number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. Except that: Sections 7.8 and 7.10 of Appendix D and the following portions of Appendix E: Section 7, Issue Statement I of Appendix A, and Appendix B in the Working Group Report are not incorporated herein.

2. In § 52.26(b), redesignate paragraphs (1) through (3) as (2) through (4), respectively.

3. Add § 52.26(b)(1) to read as follows:

(a) Each designated N-1 carrier (as described in the *Working Group Report*) is responsible for ensuring number portability queries are performed on a N-1 basis where "N" is the entity terminating the call to the

end user, or a network provider contracted by the entity to provide tandem access, unless another carrier has already performed the query.

4. Revise § 52.26(c) to read as follows:

(c) The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the *Working Group Report* and its appendices can be obtained from the Commission's contract copier, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), and can be inspected during normal business hours at the following locations: Reference Information Center, 445 12th Street, SW., Room CY - A257, Washington, DC 20554 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. The *Working Group Report* and its appendices are also available on the Internet at <https://docs.fcc.gov/public/attachments/DOC-341177A1.pdf>.

## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NNP NPRM*.<sup>2</sup> The Commission sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

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

2. In this Order, we modernize our systems by setting the stage for more efficient use of the telecommunications network, and pave the way for nationwide number portability (NNP). We eliminate rules that were intended for a market that was divided along more static, segmented categories of telecommunications providers. Those rules are far less applicable to today's more integrated providers and pricing plans and may lead to complications that stand in the way of achieving NNP.

3. We forbear from the interexchange dialing parity requirements for competitive local exchange carriers (LECs), creating a more level playing field with the incumbent LECs who received forbearance from their interexchange dialing parity obligations through the *2015 USTelecom Forbearance Order*.<sup>4</sup> Specifically, we propose to revise rule 51.205 and remove rules 51.209, 51.213 and 51.215.<sup>5</sup> We also amend rule 52.26(a) to allow originating carriers to perform number portability database queries in the Number Portability Administration Center/Service Management System (NPAC/SMS), but require the N-1 carriers to perform the queries if the originating carriers have not. This allows greater flexibility for different carriers to determine who is best placed to bear the cost of performing the query.

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

4. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

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

5. 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 Rules Will Apply**

6. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *NNP NPRM*.<sup>6</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small

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<sup>1</sup> 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).

<sup>2</sup> See *NNP NPRM*, 32 FCC Rcd at 8057-66-, Appx. B.

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, Memorandum Opinion and Order, 31 FCC Rcd 6157 (2015) (*2015 USTelecom Forbearance Order*).

<sup>5</sup> 47 CFR §§ 51.205, 51.209, 51.213, 51.215 (toll dialing parity requirements).

<sup>6</sup> See 5 U.S.C. § 604(a)(4).

business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>8</sup> 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.<sup>9</sup>

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>10</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>11</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>12</sup>

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>13</sup> Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).<sup>14</sup>

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> U.S. Census Bureau data from the 2012 Census of Governments<sup>16</sup> indicates that there were 90,056 local governmental jurisdictions consisting of general

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<sup>7</sup> See 5 U.S.C. § 601(6).

<sup>8</sup> See 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.”

<sup>9</sup> See 15 U.S.C. § 632.

<sup>10</sup> See 5 U.S.C. § 601(3)-(6).

<sup>11</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016)

<sup>12</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small business are there in the U.S.?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>13</sup> 5 U.S.C. § 601(4).

<sup>14</sup> Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: “Registered Nonprofit Organizations”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

<sup>15</sup> 5 U.S.C. § 601(5).

<sup>16</sup> See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.CO G#>.

purpose governments and special purpose governments in the United States.<sup>17</sup> Of this number there were 37, 132 General purpose governments (county<sup>18</sup>, municipal and town or township<sup>19</sup>) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts<sup>20</sup> and special districts<sup>21</sup>) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.<sup>22</sup> Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”<sup>23</sup>

10. *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.”<sup>24</sup> 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.<sup>25</sup> Census data for 2012 shows that there were 3,117 firms that operated

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<sup>17</sup> See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

<sup>18</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

<sup>19</sup> See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

<sup>20</sup> See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

<sup>21</sup> See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. [The U.S. Census Bureau data did not provide a population breakout for special district governments.](#)

<sup>22</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

<sup>23</sup> *Id.*

<sup>24</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>25</sup> See 13 CFR § 120.201, NAICS Code 517110.

that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>26</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *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, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> 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.<sup>28</sup> The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

12. *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 as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup> According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>31</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>32</sup>

13. *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, as defined in paragraph 11 of this FRFA. 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.<sup>33</sup> 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

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<sup>26</sup> 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>27</sup> See 13 CFR § 120.201, 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>28</sup> 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>29</sup> See 13 CFR § 120.201, NAICS Code 517110.

<sup>30</sup> 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>31</sup> 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*).

<sup>32</sup> *Id.*

<sup>33</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

of either competitive local exchange services or competitive access provider services.<sup>34</sup> 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.<sup>35</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>36</sup> Of this total, 70 have 1,500 or fewer employees.<sup>37</sup> 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 the adopted rules.

14. *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 as defined in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>38</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>39</sup> Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>40</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

15. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>41</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>42</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>43</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

16. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual

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<sup>34</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>39</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>40</sup> *Id.*

<sup>41</sup> 2012 U.S. Economic Census, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>42</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS code 517911.

<sup>43</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 517911.

network operators (MVNOs) are included in this industry.<sup>44</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>45</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>46</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>47</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>48</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>49</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. 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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>53</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the *RCC 2nd FNRPM*.

18. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.<sup>54</sup> According to the Commission's Form 499 Filer Database, 500

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<sup>44</sup> 2012 U.S. Economic Census, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>45</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>46</sup> 2012 U.S. Economic Census, NAICS Code 517911, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>47</sup> *Id.*

<sup>48</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>49</sup> *Id.*

<sup>50</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>51</sup> 2012 U.S. Economic Census, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>52</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>53</sup> *Id.*

<sup>54</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

companies reported that they were engaged in the provision of prepaid calling cards.<sup>55</sup> The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

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.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>59</sup> 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. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission 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.<sup>60</sup> The SBA has approved these definitions.<sup>61</sup>

21. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>62</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>63</sup> According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>64</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>65</sup> Therefore, a little less than one third of these entities can be considered small.

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<sup>55</sup> See <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited Mar. 22, 2018).

<sup>56</sup> 2012 U.S. Economic Census, NAICS Code 517210, <https://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#>.

<sup>57</sup> 2012 U.S. Economic Census, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>58</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>59</sup> *Id.*

<sup>60</sup> *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>61</sup> 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*).

<sup>62</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS code 517210.

<sup>63</sup> *Id.*

<sup>64</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>65</sup> *Id.*

22. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>66</sup> The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.<sup>67</sup> The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees.<sup>68</sup> Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

23. *Cable Companies and Systems (Rate Regulation).* 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 company" is one serving 400,000 or fewer subscribers nationwide.<sup>69</sup> Industry data indicate that there are currently 4,600 active cable systems in the United States.<sup>70</sup> Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.<sup>71</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>72</sup> Current Commission records show 4,600 cable systems nationwide.<sup>73</sup> Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>74</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

24. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, 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 one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.<sup>75</sup> Accordingly, an operator serving fewer than 524,037 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

<sup>66</sup> See 2012 U.S. Economic Census, <https://www.census.gov/agi-bin/ssd/naics/naicsrch>.

<sup>67</sup> 13 CFR § 121.201; 20116 NAICSs Code 515210.

<sup>68</sup> See 2012 U.S. Economic Census, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodTtype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodTtype=table).

<sup>69</sup> 47 CFR § 76.901(e)

<sup>70</sup> Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>71</sup> See SNL KAGAN at <https://www.snl.com/interactiveX/MyInteractive.aspx?mode=4&CDID=A-821-38606&KLPT=8> (subscription required).

<sup>72</sup> 47 CFR § 76.901(c).

<sup>73</sup> See *supra* note 70.

<sup>74</sup> *Id.*

<sup>75</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2016, Notice of Proposed Rulemaking*, MD Docket No. 16-166, 31 FCC Rcd 5757, Appendix E para. 23 (2016) (citing Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009).

million in the aggregate.<sup>76</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>77</sup> 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.<sup>78</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, 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.

25. *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 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.”<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

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

26. In this *Order*, we forbear from the toll interexchange dialing parity requirements for competitive LECs creating a more level playing field with the incumbent LECs who received forbearance from their interexchange dialing parity obligations through the *2015 USTelecom Forbearance Order*.<sup>82</sup> Specifically, we propose to revise rule 51.205 and remove rules 51.209, 51.215 and 51.215.<sup>83</sup> We also amend rule 52.26(a) the requirement that the second-to-last carrier handling a call request is responsible for ensuring that the NPAC/SMS is queried, explaining that carriers earlier in the chain are allowed to make the query if they so choose.<sup>84</sup> The proposed revisions and elimination of rules remove impediments

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<sup>76</sup> 47 CFR § 76.901(f).

<sup>77</sup> *Assessment & Collection of Regulatory Fees for Fiscal Year 2016*, Notice of Proposed Rulemaking, 31 FCC Rcd 5757, Appendix E para. 23 (2016).

<sup>78</sup> 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. See 47 CFR § 76.901(f).

<sup>79</sup> 2012 U.S. Economic Census, <https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6>.

<sup>80</sup> 13 CFR § 121.201; 2012 U.S. Economic Census, NAICS Code 517919.

<sup>81</sup> 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](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table).

<sup>82</sup> *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks et al.*, Memorandum Opinion and Order, 31 FCC Rcd 6157 (2015) (*2015 USTelecom Forbearance Order*).

<sup>83</sup> 47 CFR §§ 51.205, 51.209, 51.213, 51.215 (toll dialing parity requirements).

<sup>84</sup> 47 CFR § 52.26(a).

to NNP and do not impose any reporting, recordkeeping, or other compliance requirements.

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

27. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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.”<sup>85</sup>

28. The rules adopted herein remove dialing parity requirements for competitive LECs and allows the second-to-last carrier handling a call request to query the NPAC/SMS in a manner that allows more flexibility. As a result, the economic impact on affected carriers should be minimal because they impose no new requirements.

**G. Report to Congress**

29. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>86</sup> 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 FRFA (or summaries thereof) will also be published in the *Federal Register*.

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<sup>85</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>86</sup> See 5 U.S.C. § 801(a)(1)(A).

## APPENDIX C

## List of Commenters

The following parties have filed comments in response to the *NNP NPRM*.

<u>Commenter</u>	<u>Abbreviation</u>
Alliance for Telecommunications Industry Solutions	ATIS
CenturyLink	CenturyLink
Comcast Corp.	Comcast
Competitive Carriers Association	CCA
CTIA—The Wireless Association	CTIA
General Communication, Inc.	GCI
iconectiv	iconectiv
INCOMPAS	INCOMPAS
Neustar, Inc.	Neustar
Telecommunications for the Deaf and Hard of Hearing, <i>et al.</i>	TDHH
Texas 9-1-1 Alliance <i>et al.</i>	Texas 9-1-1 Alliance
Verizon	Verizon
WTA—Advocates for Rural Broadband	WTA

\* filing both comments and reply comment (bold - reply comments only).