

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

In the Matter of )  
 )  
Local Competition and Broadband Reporting ) CC Docket No. 99-301  
 )  
 )

**REPORT AND ORDER**

**Adopted:** March 24, 2000

**Released:** March 30, 2000

By the Commission:

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## I. INTRODUCTION

1. In this Report and Order, we adopt rules and a standardized form (FCC Form 477) to collect basic information about two critical and dynamic areas of the communications industry: the development of local telephone service competition and the deployment of broadband services. Access to this information will materially improve our ability to develop, evaluate, and revise policy in these rapidly changing areas and will provide valuable benchmarks for Congress, this Commission, other policy makers, and consumers. More broadly stated, we conclude that this information will make more effective our actions to implement the pro-competitive, deregulatory provisions of the Telecommunications Act of 1996 (1996 Act).<sup>1</sup>

2. The 1996 Act directs the Commission to take actions to open all telecommunications markets to competition and seeks to promote innovation and investment by all participants, including new entrants.<sup>2</sup> A central task in creating this new framework is the opening of previously monopolized local telecommunications markets.<sup>3</sup> By collecting timely and reliable information about the pace and extent of

<sup>1</sup> Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56, codified 47 U.S.C. §§ 151 *et. seq.* (the 1996 Act). The 1996 Act amended the Communications Act of 1934 (the Communications Act or the Act).

<sup>2</sup> Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2d Sess., at 1 (1996) (*Joint Explanatory Statement*).

<sup>3</sup> *See, e.g.*, 47 U.S.C. §§ 251, 252, 271.

competition for local telephone service in different geographic areas -- including rural areas -- we significantly improve our ability to evaluate the effectiveness of actions the Commission and the states are taking to reduce economic and operational barriers to entry into those local markets. Such knowledge is a critical precursor to our ability to substantially or even totally deregulate as it becomes clear that markets are competitive.

3. Moreover, this information collection program will also enable us to better assess the availability of broadband services such as high-speed Internet access, so that we can better satisfy our duty to encourage the deployment of advanced telecommunications capability as Congress directed us to do in section 706 of the 1996 Act.<sup>4</sup> We concluded our first report on the deployment of advanced telecommunications capability in February 1999, at which time we committed to monitoring advanced telecommunications deployment through annual reports.<sup>5</sup> We also stated our intention to improve and

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<sup>4</sup> Pub. Law No. 104-104, Title VII, § 706, reproduced in the notes under 47 U.S.C. § 157. See § 706 of the 1996 Telecommunications Act (the 1996 Act) is § 706, Pub. L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 USC § 157. It provides:

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(a) In General.--The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) Inquiry.--The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) Definitions.--For purposes of this subsection:

(1) Advanced telecommunications capability.--The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) Elementary and Secondary Schools.--The term "elementary and secondary schools" means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

<sup>5</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of* (continued....)

expand upon the data that we receive.<sup>6</sup>

4. We recently initiated our second inquiry into the deployment of advanced telecommunications capability.<sup>7</sup> In the *Second Advanced Telecommunications NOI*, we explicitly stated our intention to use information collected through this fact and data gathering program in the future section 706 reports. Indeed, it is our expectation that this data will enhance our subsequent annual reports and facilitate a more comprehensive understanding of the deployment of advanced telecommunications capabilities and broadband services, particularly in rural areas.<sup>8</sup>

5. Gathering data about the development of competition for local telephone service and broadband deployment will help us to achieve the complementary goal reflected in the 1996 Act of reducing government regulation wherever possible. For example, section 10(b) requires the Commission to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."<sup>9</sup> Similarly, section 11 requires the Commission to undertake regular reviews of our existing regulations with a view towards their elimination. In relevant part, section 11 directs the Commission to "determine whether any . . . regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."<sup>10</sup> In order to satisfy these directives, we need a factual basis to evaluate the nature and impact of our existing regulation and, in particular, to identify areas where competition has developed sufficiently to justify deregulation. The data

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*the Telecommunications Act of 1996*, Report, 14 FCC 2d 2398, CC Docket No. 98-146, FCC 99-5 (rel. Feb. 2, 1999) (*First Advanced Telecommunications Report*). Key issues in evaluating deployment of advanced telecommunications capabilities include the state of competition in the residential advanced telecommunications services market, the existence of barriers to speedy deployment (especially of new technologies), the nature of demand for advanced telecommunications services among residential customers, and possible slow deployment in rural and low-income areas, and among persons with disabilities.

<sup>6</sup> *First Advanced Telecommunications Report*, ¶ 24.

<sup>7</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, FCC 00-57, CC Docket No. 98-146 (rel. Feb. 18, 2000) (*Second Advanced Telecommunications NOI*).

<sup>8</sup> We note that, in the *Second Advanced Telecommunications NOI*, we distinguished the terms "advanced telecommunications capability" and "broadband services." In the *First Advanced Telecommunications Report*, we defined "advanced telecommunications capability" as upstream and downstream communications paths "having the capability of supporting . . . a speed . . . in excess of 200 kilobits per second (Kbps) in the last mile." *First Advanced Telecommunications Report*, ¶ 20. Thus, in the *Second Advanced Telecommunications NOI*, we used the term "advanced telecommunications capability" when addressing the specific requirements of section 706. In contrast, we used the term "broadband services" to refer to a larger set of services that end users can access with asymmetric capabilities and speeds that are less than 200 Kbps, but are generally also considered high-speed (*i.e.*, greater than 128 Kbps in a wireless environment or 144 Kbps in a wireline environment). *Second Advanced Telecommunications NOI*, n.2.

<sup>9</sup> 47 U.S.C. § 160(b).

<sup>10</sup> 47 U.S.C. § 161(a)(2).

obtained in this collection will go far toward developing such an understanding.

6. In crafting this information collection, we seek to minimize the burdens imposed and thus, we limit this effort to specifically targeted information. We focus on easily-quantifiable and readily-available statistics that will reflect the level of service -- local telephony and broadband -- that is actually provided by incumbents and new entrants. We also take steps to reduce the burdens associated with this request for small entities, for example, by exempting the smallest service providers from reporting. We also state our intention to work with small service providers, as issues arise, to facilitate reporting procedures that may have unanticipated, disparate effects on them. We rely heavily on the input of commenters, including many service providers that will report pursuant to this program, which has helped us to refine and clarify our data request. Indeed, we believe that the final rules we adopt here will present a significantly lower burden for service providers than the proposal offered in the Notice which initiated this proceeding.<sup>11</sup> Although there may be additional information that could prove useful to our tasks, we understand that we cannot, in one data collection, gather all of the information relevant to every possible future proceeding. Instead, we expect to obtain a baseline of knowledge and understanding about the market for local telephony and broadband services that will both guide us in assessing the overall effectiveness of our actions and will enable us to ask for more specifically targeted information in discrete proceedings before this Commission. We believe that we have distilled our proposal down to that information which is most essential to tracking the development of local competition and the deployment of broadband service to American consumers. Moreover, and most telling about our goals for this proceeding, we also take affirmative steps to ensure that the information collection does not outlive its usefulness by adopting a sunset provision that will terminate the reporting requirement after five years, unless the Commission affirmatively acts to extend it.

7. Finally, we express appreciation to our colleagues in state public utility commissions for their contributions to this effort, both by filing comments in this proceeding and through their close coordination with our staff. Through this partnership, we have developed a carefully tailored federal reporting requirement that we expect should be useful to the states in evaluating their own policies and, in coordination with the Section 706 Joint Conference<sup>12</sup> and the state commissions, we hope to develop a “best practices” approach which will harmonize any reporting requirements adopted by the state commissions.

## II. EXECUTIVE SUMMARY

### Overview

- We adopt a standardized form (FCC Form 477)<sup>13</sup> for collecting this information. The form is structured to include separate sections on deployment of broadband services, local telephone service competition, and provision of mobile telephony services. We only require providers to complete the portions of the form for which they exceed the reporting thresholds.

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<sup>11</sup> *Local Competition and Broadband Reporting*, Notice of Proposed Rulemaking, FCC 99-283, CC Docket No. 99-301 (rel. Oct. 22, 1999) (*Local Competition and Broadband Reporting Notice*).

<sup>12</sup> *See FCC Establishes Federal-State Joint Conference to Promote Advanced Broadband Services*, News Release (rel. Oct. 8, 1999) (*Joint Conference News Release*). In this Order, we refer to this Joint Conference as the “Section 706 Joint Conference.”

<sup>13</sup> The Local Competition and Broadband Reporting form (FCC Form 477) is attached as Appendix B. We refer to the FCC Form 477 generically throughout the item as either “the form” or “the reporting form.”

- We require service providers to report data, in accordance with the FCC Form 477, on a state-by-state basis. To develop a more nuanced understanding of local telephone competition and broadband deployment, we direct providers to compile a list of the Zip Codes in which they offer local telephony and broadband services for each state in which they complete a form.
- We decide that we can best balance our need for timely information with our desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis.
- We conclude that we can exempt from reporting certain of the smallest service providers without materially affecting our ability to effectively assess the development of local telephone competition and the deployment of broadband services. We adopt separate thresholds for reporting data on competition for local telephone services and for reporting data on broadband services.

#### Broadband Reporting

- We require facilities-based providers of broadband services (including incumbent and competitive LECs, cable companies, MMDS providers, other fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities, government entities, and others) to report data about the status of broadband deployment. We exclude resellers of broadband services from this information collection.
- We decide that any facilities-based firm that provides at least 250 full or one-way broadband service lines (or wireless channels) in a given state, or has at least 250 full or one-way broadband customers in a given state, should be required to complete applicable portions of the form for that state.

#### Local Competition Reporting

- We require incumbent and competitive local exchange carriers (LECs) to report data about their provision of local exchange and exchange access services. This obligation applies without regard to the type of technology utilized by the LEC in delivering these services and without regard to the carrier's use of entry strategy (i.e., facilities-based, pure resale, or hybrid). We also require certain facilities-based providers of mobile telephony services to participate, to a limited extent, in this data collection program.
- We decide, for purposes of reporting local competition data, that incumbent and competitive LECs need only complete forms for states in which they provide 10,000 or more voice-grade equivalent lines or wireless channels.

### **III. BACKGROUND**

8. Notwithstanding the importance of gathering timely and reliable information about the development of local competition and broadband deployment, we have not, heretofore, imposed mandatory data reporting requirements. We have, however, undertaken several initiatives to enhance our general understanding of the evolving nature of local competition and on the deployment of broadband services.<sup>14</sup>

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<sup>14</sup> For example, we held an *en banc* hearing and several open fora about the status of local telephone competition in early 1998. See *FCC to Conduct January 29 Presentation on Status of Local Telephone Competition*, Public Notice (rel. Jan. 22, 1998). Similarly, we held an *en banc* hearing on bandwidth issues in the last mile of our nation's telecommunications infrastructure on July 9, 1998. See *Commission to Hold Bandwidth En Banc Hearing*, Public Notice (rel. July 9, 1998).

For example, the Common Carrier Bureau (Bureau) developed a short survey about the status of local competition and conducted several rounds of voluntary surveys, initially from a small group of incumbent LECs and eventually expanded to include more incumbents and a small number of competitive LECs.<sup>15</sup>

9. In the *First Advanced Telecommunications Report*, we sought to provide an objective and detailed snapshot of the broadband industry, at that point in its infancy, and an overview of the technical and public policy issues related to this dynamic market. Following release of the *First Advanced Telecommunications Report*, we have taken additional steps to improve our understanding of the broadband industry.<sup>16</sup> For example, the Cable Services Bureau released a staff report on the state of the broadband industry based on monitoring sessions it held with key stakeholders, including representatives from Internet service providers, online service providers, local exchange carriers, long distance telephone companies, cable operators, community organizations, financial analysts, academics and local franchising authorities.<sup>17</sup>

10. On October 7, 1999, we proposed to formalize our monitoring efforts in the *Local Competition and Broadband Reporting Notice*, which initiated this proceeding.<sup>18</sup> In that Notice, we proposed an information collection program that would allow us to gather comprehensive and reliable data about the status of local competition and the deployment of broadband services.<sup>19</sup> We sought comment on all aspects of that proposal, including our tentative conclusions about the type of service providers that should report, exemptions for smaller entities, frequency of reporting, data to be reported, and even the methods (such as electronic filing) of reporting.<sup>20</sup> In response to the Notice, we received comment from over forty parties, including comments from carriers and other non-carrier entities that fell within the scope of our proposed reporting requirement, state public utility commissions, and consumer advocates.<sup>21</sup>

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<sup>15</sup> That voluntary survey, which the Bureau issued in February 1998 and refined over the next year, provided the framework for a Bureau-issued Public Notice addressing the need to monitor local competition and served as the basis for a series of Bureau staff reports. See FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition* (rel. Dec. 1998). This report was updated in August 1999. FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition: August 1999* (rel. Aug. 1999).

<sup>16</sup> For example, the Common Carrier Bureau revised the voluntary local competition survey to include questions about the number of broadband lines or channels in service to residential customers, and the technologies used to deliver those services. See <[http://www.fcc.gov/ccb/local\\_competition/survey5](http://www.fcc.gov/ccb/local_competition/survey5)>.

<sup>17</sup> FCC, Cable Services Bureau, *Broadband Today*, Staff Report (Oct. 1999).

<sup>18</sup> *Local Competition and Broadband Reporting Notice*.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> A list of commenters is included as Appendix D. Additionally, two parties submitted motions requesting that the Commission accept their late-filed comments. *Roseville Motion for Leave to File* and *Tennessee OAG Motion to Accept Late-Filed Reply Comments*. We grant these motions to the extent that we accept their comments as informal comments pursuant to section 1.419(b) of our rules. 47 C.F.R. § 1.419(b).

In the Notice, we referred to comments filed in response to a Public Notice released by the Common Carrier Bureau. See *Local Competition and Broadband Reporting Notice*, ¶ 10 n.17, citing *Common Carrier Bureau Seeks Comment on Local Competition Survey*, Public Notice, 13 FCC Rcd 9279, DA 98-839, CC Docket No. 91-141 (rel. May 29, 1998). Parties that submitted comments in response to the Bureau's Public Notice are listed in (continued....)



#### IV. LOCAL COMPETITION AND BROADBAND REPORTING

11. Based on our experience implementing the 1996 Act and our desire to develop a reliable and empirical understanding about the development of competition for local telephone service<sup>22</sup> and the deployment of advanced telecommunications services, we conclude that gathering comprehensive and consistent information from local telecommunications and broadband service providers is critical to our regulatory responsibilities. Accordingly, we adopt rules that require certain providers of local telecommunications and broadband services to report about the status of their service deployment.<sup>23</sup> As a vehicle for collecting this data consistently and efficiently, we also adopt a Local Competition and Broadband Reporting form, which is attached as Appendix B.<sup>24</sup> In adopting these rules and this form, it is our overarching belief that access to this information will improve our ability to make an informed evaluation of what is actually happening in markets and, thus, to deregulate where possible.<sup>25</sup>

12. The record in this proceeding supports our view that the information collection program adopted here will directly and materially advance our ability to develop, evaluate, and revise broad policies and specific regulations affecting the development of local telephone competition and the deployment of broadband services.<sup>26</sup> We conclude that a better understanding of the pattern and speed of local telephone competition should enable us to assess more precisely regulatory actions taken in connection with sections 251 and 252 of the Act, including actions by the Commission and the states concerning the availability of unbundled network elements and the implementation of pricing methodologies. Similarly, we agree with the many commenters that note the value of this information in identifying situations where exercise of the

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Appendix D, as well, and their comments are referred to a “Public Notice Comments” or “Public Notice Reply Comments.”

<sup>22</sup> For simplicity and only for purposes of this proceeding, we use the terms “local telephone service,” “local telecommunications service,” and “local exchange and exchange access services” to refer collectively to the services that are subject to the local competition reporting requirements identified in this order and in our rules. These internal references are developed only for use in this proceeding and do not affect or modify any of our existing definitions of any similar terms, such as “telephone exchange service,” “exchange access,” and “telecommunications service” as set forth in the Act and our prior orders. *See, e.g.*, 47 U.S.C. §§ 153(16), (46), (47); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, CC Docket No. 96-45 (1998).

<sup>23</sup> *See* Appendix A, Rules Amended.

<sup>24</sup> *See* Appendix B, Local Competition and Broadband Reporting.

<sup>25</sup> *See, e.g.*, Competition Policy Institute Reply Comments at 4 (“While it is true that ‘reporting is a form of regulation’, we also think that, if the Commission is ultimately to modify its regulatory policies as competition progresses, it must have comprehensive information to do so.” (Citations omitted)).

<sup>26</sup> *See, e.g.*, NTCA Comments at 1 (“The Commission must have a sufficiently complete knowledge base from which to draw its conclusions as it considers and enforces rules and policies that will shape the future of the telecommunications industry.”); NEXTLINK Comments at 1-2; NorthPoint Comments at 2; Competition Policy Institute Reply Comments at 2. *Contra, e.g.*, AT&T Comments at 2-7 (stating that the proposed data collection would be unnecessarily burdensome and would not help the Commission’s decision-making process); Frontier Comments 1-3 (arguing that the Commission should continue a voluntary program).

Commission's forbearance authority may be appropriate.<sup>27</sup> We disagree with AT&T's conclusion that the Commission should seek data on local telecommunications competition only in the context of discrete rulemaking proceedings.<sup>28</sup> To the contrary, and in addition to the uses noted above, we conclude that the data collected in this proceeding will serve as a valuable benchmark for comparison with data filed by commenters -- often with vested interest in particular outcomes -- in discrete proceedings. We believe that the data collected here will improve and better inform our analysis in a variety of proceedings, such as applications for in-region, interLATA service under section 271,<sup>29</sup> merger review and compliance,<sup>30</sup> and pricing flexibility decisions.<sup>31</sup>

13. Similarly, gathering data on broadband deployment in a systematic fashion should yield comparable benefits. Our Congressionally mandated efforts to assess the availability of advanced telecommunications capability to all Americans will be substantially aided by a regular and consistent survey of current broadband deployment. This collection will allow us to monitor broadband deployment by a wide variety of entities that might not otherwise participate in a section 706 proceeding and should provide us with a more objective and comprehensive view of broadband deployment. Moreover, we find support for our conclusions about the need for a mandatory collection program in the comments of many potential respondents.<sup>32</sup> We recognize that additional inquiry will continue to be necessary, for example, through the *Second Advanced Telecommunications NOI* and through less formal processes, such as the monitoring sessions employed by the Cable Services Bureau in preparation for the recent *Broadband Today* report. For example, because this information collection focuses on actual provision of service, we may need to take additional steps to examine other aspects of broadband "deployment" and "availability," such as infrastructure deployment.<sup>33</sup> We nevertheless expect that this reporting requirement will provide a baseline for understanding the state of the broadband market that will help refine those efforts.

14. We adopt our tentative conclusion that only a comprehensively imposed, mandatory data

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<sup>27</sup> See, e.g., USTA Comments at 1; U S WEST Comments at 1; BellSouth Reply Comments at 2.

<sup>28</sup> See AT&T Comments at 2, 5.

<sup>29</sup> 47 U.S.C. § 271.

<sup>30</sup> See, e.g., *In re Applications of Ameritech Corp., Transferor and SBC Communications, Inc., Transferee For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, FCC 99-279, CC Docket No. 98-141 (rel. Oct 8, 1999) (*SBC-Ameritech Merger Order*).

<sup>31</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14,221, CC Docket No. 96-262, FCC 99-206 at ¶¶ 19-26 (rel. Aug. 27, 1999).

<sup>32</sup> See, e.g., American Cable Association Comments at 1; ALTS Comments at 1; GTE Comments at 2.

<sup>33</sup> See *First Advanced Telecommunications Report*, ¶¶ 7 ("this Report uses actual subscribership as a proxy for 'deployment' and 'availability'"), 30, 54 (discussing the terms "deployment" and "availability").

collection effort will provide us with a set of data of uniform quality and reliability.<sup>34</sup> In our experience, other publicly available information sources present less than complete pictures of actual conditions and trends in developing local telephone service markets and in the deployment of broadband. Nor do we find, among the publicly available sources suggested by commenters, the type of regular, consistent and comprehensive data necessary to illustrate developments in these markets.<sup>35</sup> Several commenters suggest, for example, that we rely on company reports to shareholders and to other regulatory agencies, or on the studies prepared by private consulting firms that are based on such company reports.<sup>36</sup> We find these sources to be incomplete and inconsistent.<sup>37</sup> Providers may rely on a variety of different measures that are not easily reconcilable in reporting information such as the number and capacity of lines in service.<sup>38</sup> Among LECs, some may report information, such as the share of total access lines provided solely over their own facilities, in greater detail than other providers report.<sup>39</sup> It is also our experience that publicly available reports often contain data reflecting incongruent time periods. For example, some publicly available reports are based on calendar year data, while others are based on fiscal year or other data. Moreover, financial and investment analysts tend to collect more complete information about publicly traded companies than about privately held companies, and may choose to analyze closely only a subset of companies.<sup>40</sup> Perhaps as a result of this focus, analyst reports tend to lack data concerning developments in rural and underserved markets and by smaller companies.

15. We further conclude that voluntary surveys are an inadequate source of data, given our desire to obtain comprehensive information about the development of these markets that will be comparable over time. In this regard, we disagree with commenters that urge us to continue and expand the Bureau's prior

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<sup>34</sup> See, e.g., Competition Policy Institute Reply Comments at 4 (“the Commission states a convincing case that a mandatory collection will generate more reliable and uniform data than it has previously generated through voluntary data collection”). *Contra* Winstar Comments at 2 (stating that the Commission should rely on voluntary filings and other sources, such as private sector reports).

<sup>35</sup> See, e.g., Omnipoint Comments at 7-8; Prism Comments at 4; AT&T Comments at 4-6.

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

<sup>37</sup> *Accord* GSA Reply Comments at 4.

<sup>38</sup> See, e.g., P. Bernier, “Getting a Handle on Access Line Growth; Numbers Sometimes Lie,” *X-CHANGE* (Oct. 1998) at 16.

<sup>39</sup> For example, the quarterly reports to shareholders of McLeodUSA include information about the portion of business customer lines and, separately, residential customer lines that the company provides by means of its own facilities. See “McLeodUSA Reports Record Results For Fourth Quarter And 1999” available at <<http://www.mcleodusa.com/aboutmcleodusa/pressreleasesarchive/index.php3>> (Jan. 26, 2000). Other competitive LECs, such as Allegiance, ICG, and Intermedia, have reported the percentage of total lines that are “on switch.” See “Allegiance Telecom Announces Results For Fourth Quarter and Year-End 1999” available at <[http://www.allegiancetelecom.com/investor\\_relations.html](http://www.allegiancetelecom.com/investor_relations.html)> (Feb. 8, 2000); “ICG Reports Fourth Quarter & Year-end 1999 Results” available at <<http://www.icgcom.com/investor/earnings.htm>> (Feb. 29, 2000); “Intermedia Communications Announces Fourth Quarter and Full Year 1999 Results” available at <<http://www.intermedia.com/company/press>> (Feb. 15, 2000). None of these companies provides such information on a state-by-state basis.

<sup>40</sup> See, e.g., K. Hoexter and S. Cross, *Emerging Broadband Competitors* (Merrill Lynch & Co., Feb. 14, 2000) (initiating coverage on 15 competitive LECs).

voluntary survey.<sup>41</sup> While the Bureau's voluntary surveys yielded some useful information about evolving patterns of local competition, we conclude that the benefits of a mandatory program far exceed the incremental costs of imposing such a requirement. The Notice described our concerns about the level of participation and, to some degree, the accuracy and consistency of the data filed in the voluntary program.<sup>42</sup> We found, in particular, that competitive LECs declined to participate in the Bureau's voluntary survey. In the course of the four voluntary surveys in which the Bureau invited a dozen competitive LECs to participate, only one competitive LEC participated consistently, and three of the largest competitive LECs did not participate at all.<sup>43</sup> The refusal of such a large portion of invited competitive LECs to provide data on a voluntary basis left significant gaps in the data obtained and limited our ability to draw meaningful conclusions about the development of competition for local telephone service. Moreover, we observed that even carriers that participated actively in the voluntary surveys informed us that they are not interested in participating in long-term voluntary efforts without the required participation of a more comprehensive set of providers.<sup>44</sup> Thus, CompTel's assurances that competitive LECs would be willing to participate in a voluntary survey notwithstanding, we conclude that a mandatory requirement will lead to more consistent and accurate reporting.<sup>45</sup> We expect that a mandatory information collection from a broad array of providers will enable us to draw specific, reliable, and accurate conclusions about the state of local competition and broadband deployment in particular geographic markets -- conclusions that we can document over time.

16. Our conclusions about the need for a systematic data collection are bolstered by a February 1999 resolution of the National Association of Regulatory Utility Commissioners (NARUC), in which NARUC "supports federal efforts to collect consistent data on local competition and broadband deployment on a state-by-state basis."<sup>46</sup> NARUC observed, and we agree, that reliable information is required if state

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<sup>41</sup> See, e.g., Frontier Comments at 2-3; PCIA Comments at 3-4; Winstar Reply Comments at 2-3.

<sup>42</sup> See *Local Competition and Broadband Reporting Notice*, ¶ 18 (observing that some of the firms invited to participate were unwilling to provide any information at all, while, in other cases, participating firms have responded only to some of the surveys).

<sup>43</sup> We also note that, at most, just over half of the invited competitive LECs participated and, in the last two surveys, less than one-third actually filed data.

<sup>44</sup> *Local Competition and Broadband Reporting Notice*, ¶ 18 n.27 (citing correspondence from participants in the voluntary survey).

<sup>45</sup> See CompTel Comments at 5.

<sup>46</sup> The resolution continues as follows:

RESOLVED, that future federal collections of data on local competition and broadband deployment should be conducted on a comprehensive basis; and be it further

RESOLVED, that federal data collections should use the same definitions of geographic areas to the extent possible as used by a state when that state requires local competition or broadband deployment data to be reported for geographic areas smaller than the entire state; and be it further

RESOLVED, that the FCC continue to work with the states and with the industry to determine appropriate and reasonable data collection efforts that are not unduly burdensome or costly.

(continued....)

and federal regulators are to fashion consistent, harmonious policies to carry out Congress's directive to encourage local telephone competition and the widespread deployment of broadband services.<sup>47</sup> We also note that NARUC has recently called again for a federal information collection about the status of local telephone competition and the deployment of broadband services.<sup>48</sup> Indeed, given our commitment to work with state and local governments to develop policies to promote the deployment of advanced services,<sup>49</sup> we take particular note of the supportive comments filed by the Arkansas Commission and the Tennessee Office of the Attorney General.

17. We find unpersuasive the arguments of some commenters that the Commission should rely on state data collection efforts, in lieu of creating a federal program.<sup>50</sup> Again, we think that the resolution adopted by NARUC and the comments filed on behalf of state governments are telling about the need for a comprehensive *federal* program. We recognize that various states have implemented local competition reporting requirements and that some of these state programs ask for information similar to that we seek here.<sup>51</sup> Nothing in the record, however, contradicts our understanding that these state programs are not uniform and differ sufficiently so that carriers serving different states may need to keep multiple sets of records in order to meet similar, but not identical, reporting requirements. We remain convinced that a properly designed federal program can complement state efforts and end up reducing the reporting burdens imposed, overall, on carriers. By making data available to state commissions pursuant to the procedures articulated in this Order,<sup>52</sup> we hope to provide states with valuable empirical information about the status of local telecommunications competition and broadband deployment in their states. With access to this

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*See Resolution On The Importance Of Systematically Collecting Data On Local Competition And Broadband Deployment*, Resolutions Adopted by NARUC Board of Directors, Washington, D.C., Feb. 24, 1999, available at <<http://www.naruc.org/rescont.htm#Collecting Data>>.

<sup>47</sup> *Id.* The NARUC Board also observed that "the Federal Communication Commission's current, voluntary data collection efforts do not elicit complete and fully comparable data on local competition and broadband deployment." *Id.*

<sup>48</sup> *See Data Gathering Resolutions*, Resolutions Adopted by NARUC Board of Directors, Washington, D.C., Mar. 8, 2000, available at <<http://www.naruc.org/meetings/2000WinterMeetings/resolutions/index.htm#Telecom>> (stating that the NARUC Board of Directors "commends the Federal Communications Commission for its efforts to collect reliable and systematic information about the state of competition for local telephone services and deployment of broadband services and encourages the Commission to adopt a mandatory information collection as soon as possible").

<sup>49</sup> *See Federal-State Joint Conference on Advanced Telecommunications Services*, Order, FCC 99-293, CC Docket No. 99-294 (rel. Oct. 8, 1999) (*Section 706 Joint Conference*).

<sup>50</sup> *See, e.g.*, Prism Comments at 3-4; MediaOne Comments at 4 ("a new federal reporting program should not be adopted unless and until other reporting mandates are either consolidated or eliminated").

<sup>51</sup> *See, e.g.*, Public Utility Commission of Oregon, Order No. 98-506, available at <<http://www.puc.state.or.us/orders/98orders/98-506.htm>>; Florida Public Service Commission, Division of Telecommunications, *Competition in Telecommunications Markets in Florida* (Dec. 1999; Dec. 1998; Dec. 1997) available from Division of Records and Reporting.

<sup>52</sup> *See infra* Section IV.F. Confidentiality of Data.

information, some states may find it possible to revise their existing reporting requirements or to refrain from adopting new or additional requirements. Moreover, we look forward to developing, in coordination with the Section 706 Joint Conference and our colleagues in the state commissions, a “best practices” approach for uniform reporting data on the status of local competition and broadband deployment.<sup>53</sup>

18. For all these reasons, we conclude that only a mandatory and systematic collection of local competition and broadband deployment information will provide the comprehensive and consistent set of data that we require to carry out our statutory mandates. While we fully intend to supplement this data with non-duplicative data from Commission, state and other public sources, we believe that the data gathered through this program is not available elsewhere and, moreover, will provide a necessary baseline for accurately analyzing the future development of local competition and broadband deployment. We set out below the individual elements of the data collection program, as formalized in our rules and as embodied in the attached form (FCC Form 477).

## **A. Types of Entities That Must Report**

### **1. Background**

19. In the Notice, we tentatively concluded that we should collect data from a wide range of broadband providers.<sup>54</sup> We noted our earlier determination that, as the benchmark for assessing the availability of advanced telecommunications capability, we should define “full broadband” services as having information carrying capacity of over 200 Kilobits per second (Kbps) in each direction, simultaneously.<sup>55</sup> Using the benchmark, we proposed that any entity that either has a defined number of full broadband service lines (or wireless channels) nationwide, or has a defined number of full broadband subscribers nationwide, should be required to complete all relevant parts of the form, regardless of whether that entity meets the criteria for reporting local competition data.<sup>56</sup>

20. In addition, we tentatively concluded that we should collect data concerning the development of competition for local telephone service from large and medium incumbent LECs<sup>57</sup> – as well as their wireline and fixed wireless competitors, and also their mobile wireless telephony potential competitors.<sup>58</sup> Moreover, we tentatively concluded that the obligation to complete the form should not depend on the type of technology that an incumbent LEC or competitive LEC uses to provide local telephone service.<sup>59</sup> We also

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<sup>53</sup> See *Joint Conference News Release* (“The Joint Conference will focus on monitoring advanced services deployment, combining federal-state data collection efforts, minimizing potential inconsistencies and overlaps between federal and state policy, and coordinating federal-state initiatives to promote deployment of advanced services.”). See also Teligent Comments at 2-3 (encouraging the Commission to work with state commissions to reduce duplicative reporting burdens); MediaOne comments at 3.

<sup>54</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 31-33.

<sup>55</sup> *Id.* at ¶ 41. See also *First Advanced Telecommunications Report*, ¶¶ 20-25.

<sup>56</sup> *Local Competition and Broadband Reporting Notice*, ¶ 31.

<sup>57</sup> See *infra* Section IV.B. Exempting Smaller Entities (discussing reporting thresholds).

<sup>58</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 25-30.

<sup>59</sup> *Id.* at ¶ 27.

tentatively decided to collect data from carriers that provide mobile telephony services because of their potential to become substitutes for wireline service.<sup>60</sup>

## 2. Overview

21. Based on our understanding of the development of competition for local telephone service and the deployment of broadband services, we adopt rules that identify which local telecommunications and broadband service providers must comply with this data collection program.<sup>61</sup> In determining the reach of this reporting requirement, we balance our need to collect reliable and comprehensive data with our desire to minimize reporting burdens, particularly for smaller entities that may lack significant resources to devote to regulatory compliance.<sup>62</sup> We are also mindful of differences in the development of competition for local exchange services and the deployment of broadband services. For example, section 706 requires us to monitor the deployment of advanced telecommunications capabilities regardless of the technology or transmission media employed,<sup>63</sup> and we anticipate that some -- if not many -- broadband service providers will not provide telephone service. We thus contemplate that some entities will complete the broadband portion of the form, but will not need to complete the local competition portion of the form because they do not offer local exchange or exchange access services. Accordingly, we adopt a two-part reporting form pursuant to which carriers and other entities must complete applicable portions of the Local Competition and Broadband Reporting Form based on the type of services that they provide and the extent of their deployment of these services.<sup>64</sup> We discuss the reporting requirements for broadband data and local telephone competition data, in turn.

## 3. Entities Reporting Broadband Data

22. In determining what types of entities should report data about broadband deployment, we note that Congress has given the Commission a broad statutory mandate to evaluate the deployment of advanced telecommunications capabilities, that does not distinguish between the transmission media or technology employed.<sup>65</sup> We are also mindful that the market for broadband services is rapidly changing, both in terms of the type of entities offering these services and in terms of the capability of the services offered.<sup>66</sup>

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<sup>60</sup> See *Local Competition and Broadband Reporting Notice*, ¶¶ 28-29. We noted that providers of mobile telephony services may include facilities-based providers of cellular, broadband personal communications (PCS) service, specialized mobile radio services (SMR), as well as providers using satellite technology. *Id.*

<sup>61</sup> See Appendix A, Rules Amended.

<sup>62</sup> The Commission, in this as well as other proceedings, tries to craft its rules in such a manner that the burdens imposed take into account any potentially disparate impact such rules may have on smaller entities. See *LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning Interstate, Interexchange Marketplace; LEACO Rural Telephone Cooperative, Inc.*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd. 10,711 (rel. June 30, 1999). See *infra* Section IV.B. Exempting Smaller Entities (for a further discussion of reporting thresholds).

<sup>63</sup> See 1996 Act, § 706(b), (c)(1).

<sup>64</sup> The applicable parts of the survey are those containing questions that pertain to the reporting entity's operations.

<sup>65</sup> See 1996 Act, § 706(b), (c)(1). See *First Advanced Telecommunications Report*, ¶ 23.

<sup>66</sup> See *First Advanced Telecommunications Report*, ¶¶ 45-61.

Accordingly, we decide, at this time, to collect data from facilities-based providers of “full broadband” and “one-way broadband” services.<sup>67</sup> We choose to collect data from providers of “full broadband services” because that is the indicia that the Commission previously utilized when assessing the deployment and availability of advanced telecommunications capability pursuant to section 706.<sup>68</sup> We also include providers of “one-way broadband services” because we believe that these services are an important stepping stone in the deployment of advanced telecommunications services and that these services may be priced to be particularly attractive to residential customers seeking, for example, high speed Internet access. Our decision to base the reporting threshold not only on full broadband lines, but also on one-way broadband lines was widely supported by commenters.<sup>69</sup>

23. Given that the broadband market is still in its infancy, we expect that these services may be delivered by a wide variety of providers employing diverse technologies. We have seen evidence that providers of broadband services may include: LECs (incumbent and competitive), cable television companies, utilities, MMDS/MDS/“wireless cable” carriers, other fixed wireless providers, mobile wireless carriers (both terrestrial and satellite-based), government entities, and others.<sup>70</sup> At this time it is not yet clear which broadband services, provided by means of which particular technologies and by what types of carriers, will be purchased in large numbers by American consumers. We believe that only by casting our net wide enough to include all such entities can we discern progress, or the lack of it, in meeting the goals stated in the *First Advanced Telecommunications Report*: a competitive broadband market with many providers, many competing technologies bringing broadband to consumers, and new technologies increasing the capacity of the consumer’s broadband service and, in turn, creating demand among consumers for new applications.<sup>71</sup> We note that this inclusive approach was supported by the majority of commenters.<sup>72</sup>

24. By only requiring reporting from entities that are actually providing service to customers, we necessarily exclude certain entities that might become significant providers of broadband services in the future. We expect that some providers, such as utility companies in rural areas, may have significant broadband-capable infrastructure deployed and, thus, may have the potential to offer broadband services.

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<sup>67</sup> As discussed fully below in Section IV.B., we decide that any entity that provides at least 250 full or one-way broadband service lines (or wireless channels) in a given state, or has at least 250 full or one-way broadband subscribers in a given state, must complete the broadband portion of the survey for that state. *See infra* Section IV.B. Exempting Smaller Entities (discussing reporting thresholds).

<sup>68</sup> *See First Advanced Telecommunications Report*, ¶¶ 20-25. We use the term “full broadband” synonymously with the term “advanced telecommunications capability,” *i.e.*, as having the capability of supporting, in both the downstream and the upstream directions, a speed in excess of 200 Kbps in the last mile. We use the term “one-way broadband” to refer to services with greater than 200 Kbps information carrying capacity in one direction, but not both, in the last mile. *See also supra* n.8 (concerning the generic term “broadband services”).

<sup>69</sup> *See, e.g.*, Arkansas Commission at 4; NorthPoint Comments at 5; Competition Policy Institute Reply Comments at 9-11.

<sup>70</sup> *See, e.g., First Advanced Telecommunications Report*, ¶¶ 54-61 (outlining the deployment of broadband facilities by different kinds of companies).

<sup>71</sup> *See First Advanced Telecommunications Report*, 14 FCC Rcd 2398, 2402. Although these goals were articulated in terms of *residential* consumers in the *First Advanced Telecommunications Report*, we believe that they apply with equal force to the delivery of services for business customers.

<sup>72</sup> *See, e.g.*, ACA Comments at 14; Competition Policy Institute Reply Comments at 10-11.



While insight into this potential would be useful, we nevertheless exclude these providers and focus on actual service delivered because this focus will provide easily-quantifiable and easily-comparable data.<sup>73</sup>

25. Similarly, we precisely target our information collection by only requiring broadband reporting from facilities-based providers.<sup>74</sup> This program provides a unique opportunity to gather data about the development of the “last mile” of network which extends to the customer. As we observed in the *First Advanced Telecommunications Report*, broadband opens the possibility of new facilities to serve the last mile to the home because traditional telephone and cable networks may not be well suited for broadband.<sup>75</sup> At the same time, by excluding from reporting entities that only resell broadband services we will exclude many entities that have not, heretofore, reported to the Commission on a regular basis. For example, Internet Service Providers (ISPs) that only obtain Digital Subscriber Line (DSL) service from telephone companies or high speed data services from cable companies that is incorporated into a premium (higher-speed) option for their Internet service will not report.<sup>76</sup> As noted below, we have designed the form so that these services will be reported by the underlying provider of the broadband facilities.<sup>77</sup>

26. We are persuaded that the threshold for reporting broadband data should be tied not only to full broadband services, but to the provision of either full or one-way broadband services.<sup>78</sup> We agree with commenters who indicate that, at least in certain market segments, one-way broadband services may be more widely available than full broadband services.<sup>79</sup> Thus, we require respondents to report information about their deployment of one-way broadband services. By tying the reporting requirement to both full and one-way broadband lines, however, we do not revisit our definition of advanced telecommunications capability in this proceeding.<sup>80</sup> Rather, we simply expect to gather data about services that may be

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<sup>73</sup> In the *Second Advanced Telecommunications NOI*, the Commission does seek comment on similar issues, including investment and actual and committed deployment of broadband facilities. *Second Advanced Telecommunications NOI*, ¶¶ 11-14.

<sup>74</sup> For purposes of this information collection, by “facilities-based providers,” we mean entities that provide broadband services over their own facilities, UNEs, special access lines, and other leased lines and wireless channels that they equip as broadband. *See also infra* Section III.E. Data to Be Reported (discussing the terms “facilities based providers” and “own facilities”).

<sup>75</sup> *First Advanced Telecommunications Report*, ¶ 46.

<sup>76</sup> Examples of such arrangements are the agreements under which America Online announced its intention to lease, from Bell Atlantic and SBC Communications, Digital Subscriber Line (DSL) capacity that America Online will incorporate into a premium (higher-speed) option for its Internet service. *See* “America Online and Bell Atlantic Form Strategic Partnership to Provide High-Speed Access for the AOL Service,” Press Release, (Jan. 13, 1999); “America Online and SBC Communications to Offer High-Speed Upgrade to AOL Members,” Press Release (Mar. 11, 1999).

<sup>77</sup> *See infra* Section IV.E. Data to Be Reported. *See also* AT&T Comments at 15-16; BellSouth Reply Comments at 8; Letter from Donna N. Lampert to Magalie Roman Salas (Dec. 3, 1999) (on behalf of America Online, urging the Commission to collect data only from “providers of the transmission services, as opposed to . . . Internet Service Providers”).

<sup>78</sup> *See, e.g.*, Arkansas Comments at 4; Bell Atlantic Comments at 6-7; USTA Comments at 6; BellSouth Reply Comments at 7.

<sup>79</sup> *See, e.g.*, NorthPoint Comments at 5; Bell Atlantic Comments at 6; Arkansas Commission Comments at 4.

stepping stones to full broadband services and we expect that this information will be useful should the Commission decide, in the future, to revise its definition of advanced telecommunications capability in the context of future section 706 reports.<sup>81</sup>

27. We reiterate our conclusion, stated as such in the Notice, that we need not decide broader questions about which broadband services constitute “telecommunications” within the precise terms of the Communications Act of 1934, as amended,<sup>82</sup> in order to include those services within the scope of this data collection program.<sup>83</sup> As we observed in the Notice,<sup>84</sup> some broadband facilities and services may not be “telecommunications” within the meaning of the Act,<sup>85</sup> but may as a practical matter be competitive with and substitutable for broadband telecommunications.<sup>86</sup> Thus, for example, we will collect data from providers of broadband services delivered over cable television systems because these services compete directly with services that clearly are telecommunications, even though the Commission has not yet made a determination about the regulatory classification of these services.<sup>87</sup>

#### 4. Entities Reporting Local Competition Data

28. We decide, based on our determination that we need comprehensive data about developing competition for local telephone service, that all local exchange carriers (LECs), both incumbent and competitive, should complete the form if they exceed our defined threshold for deployment of service.<sup>88</sup> We also require certain providers of mobile telephony services to participate in this data collection program because of the potential of their services to become substitutes for the wireline-delivered local exchange services offered by incumbent and competitive LECs. We believe, as explained in more detail below, that only by collecting data from this broad range of market participants will we be able to gain a comprehensive understanding of the development of competition for local exchange and exchange access services. To advance our complementary goal of minimizing the burdens associated with this requirement, we exempt the smallest carriers -- incumbent, competitive, and mobile -- as discussed more fully in the

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<sup>80</sup> See *Second Advanced Telecommunications NOI*, ¶ 9.

<sup>81</sup> *Id.* at n.18. See Bell Atlantic Comments at 6; Arkansas Commission Comments at 4 (“The inclusion of asymmetric services is necessary because one-way broadband service could meet some of the needs of rural communities and without such reporting there is no way to determine whether those needs are being met.”).

<sup>82</sup> See, e.g., 47 U.S.C. § 153 (43).

<sup>83</sup> *Local Competition and Broadband Reporting Notice*, ¶ 34.

<sup>84</sup> See *id.*

<sup>85</sup> 47 U.S.C. § 153(43).

<sup>86</sup> See *First Advanced Telecommunications Report*, ¶ 24. See also *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, CC Docket No. 96-45, ¶ 99 (1998).

<sup>87</sup> See *First Advanced Telecommunications Report*, ¶ 24.

<sup>88</sup> See *infra* Section IV.B. Exempting Smaller Entities (for discussion of reporting thresholds).

following section.<sup>89</sup>

29. By collecting data from both incumbent and competitive LECs, we expect to gain a comprehensive view of the current market for local exchange and exchange access services. In evaluating the status of local competition, the significance of collecting data from incumbent LECs is unchallenged by commenters.<sup>90</sup> Indeed, based on revenues alone, incumbent LECs continued to claim well over 90% of the local telephony market in 1998.<sup>91</sup> Moreover, incumbent LECs provide significant inputs to competitive LECs, both in terms of resale and unbundled network elements.<sup>92</sup> Recognizing that many incumbent LECs offer, or will soon offer, local exchange and exchange access services outside of their traditional territories, we direct incumbent LECs to file separate copies of the form for their incumbent LEC and competitive LEC operations.<sup>93</sup> By obtaining this data separately, we will gain greater insight into the degree of incumbent LEC expansion that would otherwise be undetectable, were they to report their incumbent and competitive LEC activities on the same form.

30. Collecting local competition data from competitive LECs is imperative, as well. Our experience with the voluntary surveys shows that we cannot get a reasonably accurate picture of the status of local competition from incumbent-provided information alone.<sup>94</sup> For example, to the extent that a competing local telephone service provider supplies service to customers using its own facilities, its customer lines would not be included in reports of incumbent LECs. We have stated our expectation that, over time, competitors will deploy their own facilities in markets where it is economically feasible to do so, because it is only through owning and operating their own facilities that competitors have control over the competitive and operational characteristics of their service.<sup>95</sup> Indeed, we have also stated our belief that, in some areas, the greatest benefits for consumers may be achieved through facilities-based competition.<sup>96</sup> These expectations for facilities build-out strengthen our conclusion that we must collect data relating to all three of the competitive paths Congress set forth in section 251 and, thus, that competitive LECs must

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<sup>89</sup> More precisely, we exempt LECs with less than 10,000 voice-grade equivalent lines or wireless channels (of any capacity) in a given state, and mobile telephony providers with less than 10,000 mobile telephony subscribers in a given state. See *infra* Section IV.B. Exempting Smaller Entities.

<sup>90</sup> See, e.g., TRA Comments at 5-6 (noting the importance of collecting data from incumbent LECs); U S WEST Comments at 1.

<sup>91</sup> See FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition: August 1999*, tbl. 2.1 (rel. Aug. 1999) (“Even under the most expansive definition of local service competition . . . the ILECs retain 96% of local service revenues.”).

<sup>92</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98, ¶ 13 (rel. Nov. 5, 1999) (*UNE Remand Order*).

<sup>93</sup> See, e.g., *SBC-Ameritech Merger Order*, ¶¶ 348 *et seq* (imposing conditions designed to foster significant out-of-region competition by SBC-Ameritech).

<sup>94</sup> See, e.g., Bell Atlantic Comments at 3; SBC Comments at 1; USTA Reply Comments at 1-2.

<sup>95</sup> *UNE Remand Order*, ¶ 7.

<sup>96</sup> *UNE Remand Order*, ¶ 5.

participate directly in this program.<sup>97</sup> We make clear, moreover, that we require data on local telephone service not only from facilities-based LECs but from all LECs, *i.e.*, including firms that operate solely as resellers.<sup>98</sup>

31. Through our previous efforts to monitor the status of competition for local exchange and exchange access services, we have seen ample evidence to suggest that both incumbent LECs and new entrants are exploring the use of non-wireline technologies to deliver local telephone service.<sup>99</sup> Accordingly, we decide, as proposed in the Notice, that the obligation to complete the form should not depend on the type of technology that an incumbent LEC or a competitive LEC uses to provide local service. Thus, our rules require that all LECs of a defined size should report regardless of whether the LEC utilizes wireline or wireless technologies to provide local service.<sup>100</sup> For example, competitive LECs which utilize fixed wireless technology to provide local exchange or exchange access services will be required to complete the form if they provide service above our defined threshold. Similarly, competitive LECs which provide local exchange or exchange access services over a hybrid fiber-coaxial platform will be required to complete the form if they otherwise qualify. We believe that only by establishing the scope of the reporting requirement to include these LECs will we be able to gain an adequate understanding of the changing dynamics of the market for local telephone service.

32. In addition to these providers of local telephone services, we require facilities-based providers of mobile telephony services to participate, to a limited extent,<sup>101</sup> in this data collection program to the extent that they meet the local competition reporting threshold.<sup>102</sup> The mobile telephony market generally includes facilities-based providers of cellular, broadband personal communications service (PCS), and specialized mobile radio (SMR) services that offer real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, as well as resellers of these services. In addition to terrestrial mobile providers, providers using satellite technology can also offer mobile telephony services.<sup>103</sup>

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<sup>97</sup> 47 U.S.C. § 251(c). Section 251 grants competitors flexibility in their competitive arrangements by requiring incumbent LECs to provide requesting telecommunications carriers: 1) interconnection at any technically feasible point; 2) access to unbundled network elements; and 3) retail telecommunications services for resale.

<sup>98</sup> See TRA Comments at 3 (supporting the inclusion of resellers in this information collection). In contrast, however, we only require *facilities-based* providers of mobile telephone services to report data in Part III of the form. See *infra* ¶ 34. Similarly, we only require broadband data from facilities-based providers of broadband services. See *supra* ¶ 27.

<sup>99</sup> See, e.g., Winstar Comments at 1. See also “AT&T Announces Plans to Create New Wireless Company,” News Release (Dec. 6, 1999) (reporting AT&T’s “plans to develop a wireless local exchange capability nationwide in areas of the U.S. not served by the company’s cable operations”) available at <<http://www.att.com/press/item/0,1354,2321,00.html>>.

<sup>100</sup> See, e.g., Teligent Comments at 4 n.8 (supporting tentative conclusion “that the obligation to complete the survey should not depend on the technology used to provide service”).

<sup>101</sup> See, *infra*, Section III.E. Data to Be Reported.

<sup>102</sup> See, *infra*, Section III.B. Exempting Smaller Entities.

<sup>103</sup> Satellite services, particularly geo-stationary L-band mobile satellite services and big low earth orbit systems (non-geostationary satellites) may in the future become significant providers of mobile telephony services in the (continued....)

33. As we have previously concluded in other contexts, certain providers of mobile telephony services have the potential to compete directly with traditional providers of wireline telephony services,<sup>104</sup> and we have found that typical broadband PCS and cellular telephony services meet the statutory definition of “telephone exchange service” in section 3(47)(A) of the Act.<sup>105</sup> We recognize, of course, that in the specific context of previous section 271 applications, the Commission has articulated standards that restrict the consideration of mobile telephony services when determining the presence of a facilities-based competitor.<sup>106</sup> We nevertheless conclude that, because of their practical potential as a substitute for wireline service,<sup>107</sup> it will be valuable to obtain data on the deployment of mobile telephony services. We thus reject the suggestions of some commenters that data on mobile telephony subscribers will provide no insight into competition for local telephony services.<sup>108</sup> To the contrary, we expect that even this limited data on mobile telephony subscribers will enhance our understanding of the developing potential of mobile telephony to substitute for wireline local service.<sup>109</sup> At the same time, we consider that the limited amount of information sought from mobile service providers will impose the smallest burden on such carriers consistent with our need to have access to necessary information.<sup>110</sup>

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United States. However, at present, only Iridium and Globalstar, among the licensed big LEO systems, have commenced offering commercial service and currently each has only a small number of subscribers. Banc of America Securities, Equity Research, *Payload Monthly* (Feb. 1, 2000) at 12, 21, 29. Iridium recently announced the termination of commercial service after unsuccessful negotiations to find a qualified buyer of its system. *Iridium Press Release* (Mar. 17, 2000) at 1.

<sup>104</sup> See *Telephone Number Portability*, Second Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 21204, 21228-31, CC Docket No. 95-116, ¶¶ 51-59 (1998); see also *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, 22702-05, CC Docket No. 94-102, ¶¶ 75-83 (1997).

<sup>105</sup> 47 U.S.C. § 153(47)(A). See *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, FCC 98-271, CC Docket No. 98-121 (rel. Oct. 13, 1998), ¶¶ 28-30 (*BellSouth Louisiana Order*). While we reached our conclusion in the context of a section 271 application, the status of mobile wireless telephony service in the local market may enable future decisions to regulate wireline telephony services in a flexible manner.

<sup>106</sup> For example, the Commission has determined that broadband PCS carriers may be considered competitors, within the meaning of section 271(c)(1)(A), only to the extent that their service is being used to replace wireline service, not as a supplement to wireline service. *BellSouth Louisiana Order*, ¶ 31. Moreover, pursuant to section 271(c)(1)(A), cellular telephone service may not be treated as telephone exchange service when considering the presence of a facilities-based competitor under Track A. 47 U.S.C. § 271(c)(1)(A).

<sup>107</sup> As the Commission has previously stated, there is evidence to suggest that PCS providers “appear to be positioning their service offerings to become competitive with wireline service.” *BellSouth Louisiana Order*, ¶ 33.

<sup>108</sup> See, e.g., Bell Atlantic Mobile Comments at 2-3; GTE Comments at 5; Omnipoint Comments at 7.

<sup>109</sup> See, e.g., Arkansas Commission Comments at 2.

<sup>110</sup> See *infra* Section IV.E. Data to Be Reported. For example, we accept PCIA’s suggestion that mobile telephony providers not be required to report separately the business and residential customers. PCIA Reply Comments at 7.

## B. Exempting Smaller Entities

### 1. Background

34. We tentatively concluded, in the Notice, that we could exempt smaller entities from reporting without materially affecting our ability to effectively assess the development of local competition.<sup>111</sup> We proposed to consider exemption criteria separately as applied to local competition and broadband service providers. We proposed, for purposes of reporting broadband data, that any firm that provides at least 1,000 full broadband service lines (or wireless channels) nationwide, or has at least 1,000 full broadband customers nationwide, should be required to complete applicable portions of the form.<sup>112</sup> For purposes of reporting local competition data, we tentatively concluded that we should require local exchange carriers with 50,000 or more local access lines or channels (of any capacity)<sup>113</sup> nationwide, and mobile telephony providers with 50,000 or more subscribers nationwide to comply with our proposed reporting requirement.<sup>114</sup>

### 2. Overview

35. We conclude that we can exempt from reporting certain of the smallest service providers without materially affecting our ability to effectively assess the development of local telephone competition and the deployment of broadband services. In setting these reporting thresholds, we balance our inclination to establish a more inclusive reporting requirement that will necessarily provide a more comprehensive understanding of competition for local telephone service and broadband deployment with our desire to exempt entities with the fewest resources to divert to reporting obligations.<sup>115</sup> Weighing these priorities at this time, we are guided by our belief that many of the most underserved communities may be served by only the smallest providers, *i.e.*, those that are scaled to be financially successful in small markets.<sup>116</sup> Indeed, by excluding any providers we necessarily face the possibility of understating the amount of competitive activity and broadband deployment in smaller, rural areas. Thus, we expect that these thresholds may require adjustment over time. We are committed to revising these thresholds (either upward or downward) should it be necessary based either on our experience or on changes in the relevant markets. We also state our intention to work with small providers of broadband and local telephony services as issues arise to facilitate reporting procedures that may have unanticipated, disparate effects on them.

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<sup>111</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 37-45.

<sup>112</sup> *Id.* at ¶ 41.

<sup>113</sup> *See id.* at ¶ 38 n.52 (discussing the term “access lines”).

<sup>114</sup> *Id.* at ¶¶ 38-39, 42.

<sup>115</sup> *See also supra* n.62 (discussing the Commission’s efforts to craft its rules in such a manner that the burdens imposed take into account any potentially disparate impact such rules may have on smaller entities).

<sup>116</sup> *See, e.g.*, Rural Task Force, *The Rural Difference: White Paper 2* available at <<http://www.wutc.wa.gov/rtf>> (Jan. 2000). *See also*, ALA Reply Comments at 5 (“smaller and non-telecom entities may be the only provider of broadband in rural and remote areas”); Tennessee OAG Comments at 6-7 (stating that all broadband providers should be required to report); SBC Comments at 3 (arguing that a true picture of the state of deployment of broadband services requires that the number of reporting carriers not be limited).

36. As discussed below, we adopt a different threshold for providers of broadband services than we do for providers of local telephony services. By carefully tailoring the reporting requirement, we expect to satisfy the overlapping but particular needs for data on broadband deployment and the development of local competition. We do not adopt a proposal in the Notice to require local exchange carriers that fall below our local competition reporting threshold to nevertheless report local competition data if they exceed the threshold for broadband reporting.<sup>117</sup> Thus, we accept the suggestions made by several commenters to apply these thresholds separately.<sup>118</sup> This ensures that the entity reporting under either part of the form is a significant entrant in the market before it must comply with this reporting requirement.

37. Applicable to both reporting thresholds, we make clear that the reporting thresholds should be calculated based collectively on all commonly-owned or commonly-controlled affiliates.<sup>119</sup> That is, a provider should report for each state in which it and all affiliates collectively meet the reporting thresholds. We nevertheless permit such affiliates to file forms for such states either combined or separately. This approach will grant providers flexibility about whether to file at the holding company level or for each separate legal entity,<sup>120</sup> yet will ensure that providers' decisions about how to report will not affect whether or not they must file.<sup>121</sup>

38. We discuss, below, the specific reporting thresholds for the broadband and local competition portions of the form.

### 3. Threshold for Broadband Reporting

39. With respect specifically to broadband service we note that Congress has directed us to track the deployment of advanced telecommunications capability to all Americans.<sup>122</sup> Given the broad reach of this directive, we conclude that we should establish a more comprehensive reporting requirement for providers of broadband services to ensure that we do not miss broadband developments by smaller entities, for example, in rural areas. We decide, in particular, that any facilities-based firm that provides at least 250 full or one-way broadband service lines (or wireless channels) in a given state, or has at least 250 full or one-way broadband customers in a given state, should be required to complete applicable portions of the

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<sup>117</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 38, 43.

<sup>118</sup> NTCA Comments at 3-4. *See also* AT&T Comments at n.15; NorthPoint Comments at 6; OPASTCO Comments at 3.

<sup>119</sup> *See* 47 U.S.C. § 153(1) (clarifying that a 10 percent equity interest constitutes ownership). *See also* 47 C.F.R. § 32.9000.

<sup>120</sup> We note, of course, that some incumbent LECs, namely those with both incumbent LEC and competitive LEC operations, are required to file multiple forms for activities that may be conducted through a single legal entity. This is because we require incumbent LECs to file separate forms for the incumbent and competitive LEC operations in any given state. *See supra* ¶ 29.

<sup>121</sup> Similarly, this approach will prevent entities from avoiding our state-by-state reporting thresholds simply through their choice of how to report.

<sup>122</sup> *See* 1996 Act, § 706(b).

form for that state.<sup>123</sup> By moving to a state-by-state threshold, we seek greater insight into the development of broadband markets within particular states and in specific geographical areas. We conclude that a state-level threshold will only require reporting from firms with significant presence in a particular state.

40. We conclude that a 250 broadband line or wireless channel threshold will best meet the Commission's needs. We are mindful in arriving at this threshold that the market for broadband services is relatively new, dynamic, and untested. Given the nascent state of broadband deployment and our particular interest in deployment of broadband services to rural and underserved areas, we think that a relatively low threshold is necessary to capture an accurate picture of the current state of deployment. Moreover, a threshold set too high might lead to a false conclusion about the deployment of broadband, particularly in rural areas. Even setting this relatively low reporting threshold, we note that for the median rural incumbent LEC to meet this reporting threshold, it would have to successfully deploy and market broadband to a fairly high percentage of (about 10%) of its regular telephone customers.<sup>124</sup> We emphasize, however, that to balance what we believe to be a very comprehensive reporting threshold, we have streamlined the broadband section of the reporting form so that it includes only the most essential information, in as simple a format as possible. Nevertheless, we state our intention to revisit the suitability of this threshold, in the future, should we determine that it either places undue burdens on responding entities or that it is set too high to include a significant portion of the broadband lines in service.

#### 4. Threshold for Local Competition Reporting

41. We decide, for purposes of reporting local competition data, that incumbent and competitive LECs need only complete forms for states in which they provide 10,000 or more voice-grade equivalent lines or wireless channels.<sup>125</sup> In moving to a state-by-state reporting threshold, as opposed to a national threshold, we expect to gain a better understanding of the development of local competition in specific markets. Similarly, by adopting a threshold of 10,000 voice-grade equivalent lines or wireless channels that is less than the threshold that we proposed in the Notice, we make special efforts to detect the presence of competition for local exchange and exchange access services in rural areas.<sup>126</sup> In that regard, we disagree with National Rural Telecom Association (NRTA) to the extent that it suggests that the Commission should not monitor competition in rural areas at this time.<sup>127</sup> At the same time, under this

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<sup>123</sup> See *supra* ¶ 22 (discussing the terms “full broadband” and “one-way broadband”).

<sup>124</sup> Staff estimate based on the median number of Universal Service Fund (USF) loops in a state for incumbent LECs with under 50,000 USF loops nationwide.

<sup>125</sup> For purposes of this data collection, “voice-grade equivalent lines/channels” are defined as analog circuits having 3 to 4 kHz of bandwidth, the digital equivalent of which is a 64 Kbps circuit, or DS0. See, e.g., U.S. Department of Commerce, National Telecommunications and Information Administration, “Telecommunications: Glossary of Telecommunications Terms” available at <<http://glossary.its.bldrdoc.gov/fs-1037>> (visited 3/15/00) (providing definitions of voice grade; voice frequency (VF); voice frequency (VF) channel; and digital signal 0 (DS0)).

<sup>126</sup> See, e.g. *supra* n.116, *The Rural Difference* (concluding that the population density of areas served by rural carriers is substantially less than that for non-rural carriers and that rural carriers “almost always serve the minority of the access lines in a given state”).

<sup>127</sup> NRTA Comments at 3-4 (“rural ILECs should remain exempt from reporting until their states have lawfully terminated their exemptions to § 251(c)”).



threshold we will still exclude from reporting the smallest carriers and, indeed, the vast majority of small LECs.<sup>128</sup>

42. We conclude that a 10,000 voice grade line or wireless channel threshold will allow the Commission to collect data from the significant participants in most markets without imposing burdens on entities that are relatively small. We set the threshold for reporting local telephone service data at this level because we believe that we must collect data, in particular, from competitive LECs that are becoming significant market participants, but that may have very small portions of the overall market, at this time. Thus, we have set this threshold at a level that we expect will allow us to detect emerging market participants when they achieve a fairly significant presence in a given market.<sup>129</sup> For example, a competitive LEC that targets residential customers in a state with a relatively small population, such as Wyoming, would have to attain a 5% share of the residential market in the state, before reporting.<sup>130</sup> Similarly, based on at least one definition of a rural incumbent LEC (50,000 local access lines nationwide), a competitive LEC would have to achieve a 20% market share in the territory of the largest rural incumbent LECs before it would be required to report.<sup>131</sup> Among incumbents, we estimate that the vast majority will not have to report pursuant to this requirement, even though the vast majority of incumbent LEC lines will be accounted for in this information collection.<sup>132</sup>

43. We decline to adopt NRTA's suggestion<sup>133</sup> that we exempt from reporting any entity that satisfies the definition of a "rural telephone company" as set out in section 3 of the Act<sup>134</sup> because we conclude that a more comprehensive reporting requirement is necessary to detect the development of competition for local telecommunications services, especially in rural areas. Section 3 of the Act offers multiple criteria, pursuant to which a LEC may qualify as a rural telephone company.<sup>135</sup> Several of these provisions would exempt LECs that may serve a significant share of the local telecommunications market

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<sup>128</sup> Indeed, we estimate that only 162 of the largest 925 incumbent LEC holding companies will be required to report based on this threshold. On average, each incumbent LEC will file for less than two states. We estimate, however, that over 98% of incumbent LEC lines will be reported given this threshold.

<sup>129</sup> See, e.g., Bell Atlantic Comments at 4 ("[r]educing the threshold to 10,000 lines would give a truer picture of the extent of voice-grade competition"); NCTA Comments at 10-11 ("Until the critical mass of 10,000 subscribers within a state is reached, the business will be too small relative to ILEC and other CLEC competitors to justify state-by-state reporting."); GSA Reply Comments at 10. *Contra* NTCA Comments at 3 (supporting a 50,000 line threshold because it "significantly reduces the burden on small and rural LECs"); Roseville Reply Comments at 3-4 (stating that a 10,000 line threshold would be "detrimental to all carriers other than those which are very large"); TRA Reply Comments at 2-3 (opposing commenter proposals to adopt 10,000 line per state threshold).

<sup>130</sup> According to data tabulated from the Bureau of Commerce, *Current Population Survey*, there were 191,000 households in Wyoming as of November 1999.

<sup>131</sup> See 47 U.S.C. § 153(37)(B).

<sup>132</sup> As noted above, we estimate that over 98% of incumbent LEC lines will be reported given this threshold.

<sup>133</sup> NRTA Comments at 2-4.

<sup>134</sup> 47 U.S.C. § 153(37).

<sup>135</sup> *Id.*

in a given state. For example, an exemption based on section 3(37)(C) would exempt LECs -- both incumbent and competitive -- providing local exchange service to any local exchange study area with up to 99,999 lines.<sup>136</sup> Similarly, an exemption based on section 3(37)(B) -- as proposed in the Notice -- would exempt LECs that provide local exchange service to fewer than 50,000 local access lines nationwide.<sup>137</sup> We conclude that such exemptions could leave large gaps in the data collected and would give us significantly less insight into the development of local telephone competition in any given state, and in rural areas in particular. In many states, a LEC, particularly a new entrant, with 50,000 lines would represent a significant market competitor. We also reject the suggestion of Roseville Telephone Company that we exempt all “rural carriers” as defined in section 251(f)(2) of the Act.<sup>138</sup> This section defines a “rural carrier” as “a local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide . . . .”<sup>139</sup> Thus, an exemption based on this definition would exempt LECs with approximately 3.5 million lines.<sup>140</sup> Much like the other commenter proposals rejected above, this proposal would significantly undermine our ability to monitor the development of local telephone competition. We agree that Congress did provide for special consideration of the rural telephone companies in the implementation of specific provisions of the 1996 Act.<sup>141</sup> Nowhere in the Act, however, do we find any indication that Congress sought to prevent the development of competition in rural areas or expected that competition would not ever develop in those areas. We conclude that a 10,000 voice-grade equivalent line or wireless channel threshold best balances our competing goals of collecting comprehensive data, including data about development of local telephone competition in rural areas, and reducing burdens on the smallest entities.

44. We agree with those commenters that suggest that adopting a state-by-state reporting threshold will result in a more detailed and useful picture of the development of competition than would a national threshold.<sup>142</sup> While a national threshold would enable us to obtain a snapshot of the relative success of the largest competitive carriers, we conclude that it is less desirable because it would provide little insight into the status of competition in any given state or smaller geographic market. For example, with a national threshold, we would exempt carriers with significant market presence in one state, while requiring reporting from carriers with very small operations in multiple states.<sup>143</sup> In contrast, a state-by-state reporting threshold will enable us to collect data from significant competitors that have chosen to concentrate their operations in one state. Stated more broadly, a state-level threshold will enable this Commission and other policy makers to compare and contrast characteristics of different states in order to determine which

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<sup>136</sup> See 47 U.S.C. § 153(37)(C) (defining a company as a ‘rural telephone company’ to the extent that it “provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines”).

<sup>137</sup> See 47 U.S.C. § 153(37)(B).

<sup>138</sup> 47 U.S.C. § 251(f)(2).

<sup>139</sup> *Id.*

<sup>140</sup> See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service* (rel. Sept. 1999) at tbl. 20.1 (there were about 180 million total U.S. telephone lines at the end of 1998).

<sup>141</sup> See, e.g., 47 U.S.C. § 251(f)(1) (providing an exemption for certain rural telephone companies).

<sup>142</sup> See, e.g., AT&T Comments at 10.

<sup>143</sup> See NRTA Comments 4-6.

characteristics seem to influence competition. We believe that this type of analysis will be extremely valuable both to the Commission and our colleagues in state commissions.

45. Among competitive LECs, we make special provision for cable companies providing local exchange telephony services, given their relative inexperience with reporting measures originally adopted for incumbent LECs. As with other LECs, such companies must report if they provide 10,000 or more voice-grade equivalent lines or wireless channels in a given state. While some cable companies that provide local telephony service already compile and report numbers of telephone lines or circuits provided,<sup>144</sup> we recognize that cable companies historically have described their cable television service volume in terms of number of actual subscribers. Thus, we specify that cable companies providing local telephone services may consider, in determining whether they meet the reporting threshold, their local telephone subscribership in a given state, rather than voice-grade equivalent lines in a state, where the latter is unavailable.<sup>145</sup> We note, however, that because many customers have more than one voice grade telephone line in service, information about numbers of telephone subscribers is generally less useful, for purposes of evaluating the status of local telephone service competition, than is information about numbers of lines (or equivalent circuits) in service. Thus, we permit cable companies providing local telephone service to report based on subscribers only where information on voice-grade equivalent lines in service is not available.

46. We decline to adopt a proposal to use the number of homes passed by cable telephony services -- as opposed to actual local access lines provided or telephony subscribers served -- as an alternative threshold for cable companies.<sup>146</sup> Rather, we prefer to focus on the actual delivery of service because we conclude it provides a more accurate picture of the current state of competition for local telephony services. This focus reflects our understanding that the development of competition for local exchange and exchange access services depends not only on a firm's potential to offer these services at some point in the future, but also on the ability of these firms to configure their facilities in a manner that will allow them to deliver these services at prices -- and with sufficient quality -- to make their services attractive to customers.

47. We similarly clarify our rules for mobile telephony service providers to accommodate their practice of reporting number of subscribers, rather than voice grade lines or channels *per se*.<sup>147</sup> Accordingly, our rules do not require mobile telephony providers to report for states in which they have fewer than 10,000 subscribers.<sup>148</sup> We do not know the precise number of mobile telephony providers with

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<sup>144</sup> For example, MediaOne Group reports number of residential telephone lines (13,000 as of 12/31/98) as well as number of high speed data (i.e., Internet access service) subscribers (84,000). See MediaOne Group, Inc. SEC 1998 Form 10-K Annual Report (filed Mar. 30, 1999) at 11. Similarly, Cox Communications reports, for residential telephony customers, both number of customers (27,819 as of 12/31/98) and number of lines (42,668) and, for business telephony customers, number of voice-grade equivalent circuits (322,615). See *Cox 1998 10-K* at 7.

<sup>145</sup> Because cable television companies currently do not provide telephony subscriber data to the Commission, we have no estimate of the number of cable companies, if any, that have at least 10,000 telephony subscribers in a given state.

<sup>146</sup> See *Local Competition and Broadband Reporting Notice*, ¶ 40.

<sup>147</sup> See, e.g., *CTIA's Semi-Annual Wireless Industry Survey* available at <<http://www.wow-com.com/wirelessurvey>>.

<sup>148</sup> We use the number of handsets as a proxy for subscribers, rather than the number of bills, because that number is more analogous to a voice grade line on the reporting side. However, for purposes of determining (continued....)

at least 10,000 subscribers in a given state, because mobile telephony providers currently do not report subscribership data to the Commission and reliable public data are sparse for facilities-based cellular operators with fewer than about 300,000 subscribers.<sup>149</sup> Thus, we expect that this threshold will allow us to obtain information about the presence in the market of mobile telephony providers that are serving a substantial number of customers and that may be best positioned to offer services as a substitute to wireline local exchange service.<sup>150</sup>

## C. Definition of Reporting Area

### 1. Background

48. In the Notice, we stated our view that for data to be useful it must be reported on a geographically coherent and consistent basis by all entities submitting data.<sup>151</sup> We, therefore, tentatively concluded that we should, at a minimum, require data to be reported by state for both the broadband and local telephone competition portions of the form.<sup>152</sup> We sought comment on whether the data should be collected, from some or all reporting entities, at some more narrowly defined geographic area, given that reporting by smaller geographic areas might yield sharper pictures of the extent and intensity of these developments.<sup>153</sup>

### 2. Discussion

49. We require providers to report data, in accordance with the Local Competition and Broadband Reporting form attached, on a state-by-state basis. In reaching this decision, we balance our desire to collect data that will allow us to assess the state of competition for local telephone service and broadband deployment in discrete geographic areas of the country with our desire to minimize the burdens on the service providers that will report to us.<sup>154</sup> As discussed above,<sup>155</sup> we decide that reporting at a national level would provide little useful information about the development of competition in particular states and

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whether a provider meets the reporting threshold in a given state, providers may rely on the number of billing addresses.

<sup>149</sup> Public sources of data on mobile telephony subscribership of individual carriers are summarized and analyzed in *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fourth Report, FCC 99-136 (rel. June 24, 1999) (*Fourth Annual CMRS Competition Report*).

<sup>150</sup> As discussed below, *infra* ¶¶84-85, we ask only for limited information about the number of mobile telephony service subscribers in each state where these services are offered.

<sup>151</sup> *Local Competition and Broadband Reporting Notice*, ¶ 46.

<sup>152</sup> *Id.* at ¶¶ 46-49.

<sup>153</sup> *Id.* at ¶ 49.

<sup>154</sup> See, e.g., GTE Comments at 10-11; NorthPoint Comments at 2-3; PCIA Comments at 6; Sprint Comments at 2-3; AT&T Reply Comments at 7. See also NCTA Comments at 6-7.

<sup>155</sup> See *supra* ¶ 44 (comparing state-by-state reporting thresholds with national thresholds).

in finer geographic areas. Moreover, requiring state-by-state reporting from all reporting entities should facilitate meaningful comparison within different regions of the country and, we expect, should enable state commissions to compare and evaluate the effectiveness of the policies that they adopt.<sup>156</sup> We also conclude that state-by-state data will be administratively easy for providers to compile and for Commission staff to analyze.

50. Indeed, we believe that compiling local competition and broadband deployment information by state will not be administratively difficult for any reporting entity, particularly in comparison with compiling information for smaller geographic areas on a consistent basis. We note that many commenters, including potential respondents to this information collection, support our proposal to collect data on a state-by-state basis<sup>157</sup> and none take exception to our tentative conclusion that all carriers maintain state-by-state data for a variety of tax, regulatory, and other purposes.<sup>158</sup> Moreover, no other geographic classification system appears to offer the same comparability and administrative ease. In the telecommunications industry, for example, new local service competitors need not use any of the geographic classification systems that are traditional in the industry, such as telephone exchanges, incumbent LEC study areas, or local access and transport areas (LATAs), although they must comply with requirements legitimately imposed by state regulatory authorities. Similarly, providers of terrestrial mobile wireless telephony services have received licenses to serve markets defined, variously, as Major Trading Areas, Basic Trading Areas, Metropolitan Statistical Areas, Rural Service Areas, and Economic Areas.<sup>159</sup> The situation with respect to broadband services is even more complex,<sup>160</sup> confirming our view that state reporting will provide the smallest common geographic denominator among these varied entities.<sup>161</sup>

51. While state-by-state reporting will provide valuable data that is otherwise unavailable to us, we nevertheless conclude it necessary to develop even sharper pictures of the extent and intensity of local telephone competition and broadband deployment.<sup>162</sup> In this regard, we share commenters' concerns that information collected on a state-by-state basis may not enable us to detect differences in competitive

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<sup>156</sup> See ALTS Comments at 7 ("collecting information on a state by state basis is more likely to result in the federal collection of information satisfying the needs of the states and will result in less duplication of efforts between the states and the Commission"); PCIA Reply Comments at 4 n.12.

<sup>157</sup> See, e.g., American Cable Association Comments at 12; NorthPoint Comments at 2-3; AT&T Reply Comments at 6 ("Virtually every commenter agrees the required data should be collected on a state-by-state basis. [Citation omitted]").

<sup>158</sup> See, e.g., ALTS Comments at 6; TRA Comments at 6.

<sup>159</sup> See, e.g., Third Annual CMRS Competition Report at tbl. 1A.

<sup>160</sup> Providers of broadband services may include, for example, cable television companies, utilities, MMDS/MDS/"wireless cable" carriers, and satellite-based wireless carriers, with service territories that do not correspond with the "exchanges" and "study areas" of the incumbent LEC industry.

<sup>161</sup> See, e.g., ALTS Comments at 6-7; GTE Comments at 10-11; NorthPoint Comments at 3 ("it would be useful and not unduly burdensome to have all entities ... report data on a state-by-state basis"). But see Nextel Comments at 3 (noting that it is difficult for mobile telephony providers to accurately report subscribership by state).

<sup>162</sup> See, e.g., Tennessee OAG Comments at 4; SBC Comments at 4-5; U S WEST Comments at 4; GSA Reply Comments at 13.

activity or broadband deployment among distinct communities within a given state. For example, such data might allow us to conclude that broadband is being deployed in a reasonable and timely manner in New Mexico as a whole, but may not permit us to find whether all such deployment is in Albuquerque while deployment in rural New Mexico may not be reasonable and timely. Such distinctions would be less apparent were we to allow providers to report at the national level. Thus, we decline to adopt our proposal to permit broadband entities that serve fewer than 2,000 subscribers nationwide to report on a nationwide, rather than a statewide, basis.<sup>163</sup>

52. To develop this more nuanced understanding of local telephone competition and broadband deployment, we direct providers to compile a list of the Zip Codes in which they offer local telephony and broadband services for each state in which they complete Form 477. Such lists should be easily obtainable from companies' provisioning or billing databases and will give the Commission insight into the areas served by particular providers.<sup>164</sup> By knowing whether any or multiple providers are serving a given Zip Code, the Commission will have a much clearer understanding of which customers have -- or are likely to have in the near future -- a choice among service providers. We conclude that this data, used in conjunction with other publicly-available data, will enable the Commission and others to determine the availability of services and competition in discrete geographic areas, including rural areas and other traditionally underserved areas.

53. We thus decline the suggestions of some commenters that we require providers to complete and file forms at some finer geographic levels, such as the census block level or the Zip Code level.<sup>165</sup> As described above, we conclude that completing forms at these finer levels of geographic granularity would be administratively more difficult for providers. Not only would providers have to identify data at those levels of detail, but we think that a reporting requirement that requires a national service provider to complete over 30,000 zip-code based forms would impose costs far greater than the benefits to be derived.<sup>166</sup>

54. In order to further develop our understanding of local telephone competition and broadband deployment in discrete areas, we also plan to continue our efforts to locate and utilize data available from any alternative sources, such as numbering resources databases, number portability databases, or E-911 databases. It is our hope that these sources may eventually provide us with additional information about local telephone competition and broadband deployment at finer levels of geographic granularity.<sup>167</sup>

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<sup>163</sup> *Local Competition and Broadband Reporting Notice*, ¶ 71.

<sup>164</sup> We note that many providers maintain and utilize maps to guide their deployment of facilities and expect that the Zip Code data reported in Part V of the form can be used to create similar maps showing where broadband and local exchange services are being provided. *See, e.g.*, "SBC Becomes America's Largest Single Broadband Provider With \$6 Billion Initiative" available at <[http://www.sbc.com/Technology/data\\_strategy/project\\_pronto/Home.html](http://www.sbc.com/Technology/data_strategy/project_pronto/Home.html)>; "U S WEST Network Disclosure Announcement No. 431" available at <<http://www.uswest.com/disclosures/netdisclosure431>>.

<sup>165</sup> *See, e.g.*, TRA Comments at 5-6; U S WEST Comments at 3; ALA Reply Comments at 6.

<sup>166</sup> *See generally* Allegiance Comments at 6 ("the more geographically specific the information to be reported, the greater the burdens imposed on reporting entities, particularly new entrants, who do not maintain subscriber or line data by such narrow geographic categories"); ALTS Comments at 7; Sprint Comments at 3.

<sup>167</sup> *See, e.g., Numbering Resource Optimization*, Notice of Proposed Rulemaking, FCC 99-122, CC Docket No. 99-200 (rel. June 2, 1999), ¶¶ 69-82 (discussing the need to strengthen the system for collecting data on current (continued....))

## D. Frequency of Reports

### 1. Background

55. We sought comment in the Notice about whether collecting data quarterly, semi-annually, or annually would best serve the goals of this data collection program.<sup>168</sup> We further asked commenters whether we should apply the same frequency requirements for both local competition and broadband reporting.<sup>169</sup>

### 2. Discussion

56. We decide that we can best balance our need for timely information with our desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis.

Given that, from the perspective of most consumers, broadband deployment and competition for local telephone services are still at relatively early stages of development,<sup>170</sup> we believe that it is vital to collect information about trends in this area on a frequent basis.<sup>171</sup> With semi-annual reporting, we expect to develop a picture of local telecommunications competition and broadband deployment that will be, to our knowledge, the most accurate, comprehensive, and timely one available. Collecting data on a semi-annual basis will also enable us to quickly compose a baseline assessment of these markets. Moreover, we agree with those commenters, including many potential respondents to this information collection, that state that semi-annual filing will satisfy the Commission's needs without imposing an undue burden on providers.<sup>172</sup>

57. We take seriously commenters' concerns about the level of burden produced by more frequent filing regimes, such as quarterly filing. With those concerns in mind, we have limited this information collection to readily available data that providers should be able to report with minimal burden. Indeed, we believe that we have significantly streamlined the information collection, as compared with the proposed form released with the Notice. For example, we have eliminated much of the detailed reporting about types of technology used in providing broadband services that providers stated was particularly burdensome for them to compile. Moreover, we note that many of the providers that will be part of this information

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(Continued from previous page)

and forecasted utilization of telephone numbering resources; tentatively concluding that all users of telephone numbering resources should report telephone number status data at the rate center level, at a minimum).

<sup>168</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 35-36.

<sup>169</sup> *Id.* at ¶ 36.

<sup>170</sup> See *Second Advanced Telecommunications NOI*, ¶ 39 (“as of December 31, 1999, residential broadband completed its third year as a consumer product”); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999), ¶¶ 2-4.

<sup>171</sup> Bell Atlantic Comments at 4; ALTS Comments at 5; ACA Comments at 11.

<sup>172</sup> See, e.g., Northpoint Comments at 7; Teligent Comments at 2; Bell Atlantic Comments at 4; American Cable Association Comments at 11.

collection do not have significant historical contacts with the Commission.<sup>173</sup> Recognizing their relative inexperience with Commission reporting requirements, we adopt a less frequent reporting schedule than we otherwise might if this reporting requirement were limited to firms with more resources available for compliance matters.

58. We see no reason to adopt different reporting frequencies for the local competition and broadband portions of the form. A single timetable for reporting should be administratively easier and less confusing for potential respondents to both portions of the form. We necessarily decline those suggestions that we should only require broadband data on an annual basis. As the basis for this suggestion, several commenters cite the Commission's decision to issue annual reports pursuant to section 706 as evidence that we do not need more frequent data. Our commitment to issuing annual reports notwithstanding, we nevertheless conclude that that more frequent data on the state of broadband deployment will assist the Commission in a variety of other proceedings and uses. Finally, we decline TRA's suggestion that we require more frequent reporting by incumbent LECs.<sup>174</sup> TRA has presented us with no compelling evidence to suggest that more frequent reporting by incumbent LECs is warranted.

59. We thus direct that providers of local telephone service and broadband service (that meet the defined thresholds) should complete and file the FCC Form 477 twice per year. Providers will report end-of-year data on March 1<sup>st</sup> of the subsequent year and data on the first half of the year on September 1<sup>st</sup> of that same year. However, given our desire to collect data to be used in the second Advanced Telecommunications Report, we direct that all respondents should file their end-of-year 1999 data on May 15, 2000.

## **E. Data to be Reported**

### **1. Background**

60. We set out, in the Notice, specific data items that we tentatively concluded would reveal the pattern and speed of development of local competition and broadband services as they evolve.<sup>175</sup> We invited comment on whether those specific data items would be necessary and sufficient to describe and understand the state of local competition and deployment of broadband services in diverse areas of the nation and encouraged commenters to critique and suggest revisions to a proposed reporting form.<sup>176</sup>

### **2. Overview**

61. Based on our experience with the Bureau's voluntary survey program, our *First Advanced Telecommunications Report*, and the extensive suggestions received in the record to this proceeding, we adopt the form attached in Appendix B to gather data on the status of local competition and the deployment of broadband services. With these experiences in mind, we select for this reporting program data that we

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<sup>173</sup> See, e.g., ALTS Comments at 2.

<sup>174</sup> See, e.g., TRA Comments at 7 (proposing quarterly reporting by competitive LECs and monthly reporting by incumbent LECs).

<sup>175</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 50-73.

<sup>176</sup> *Id.*



believe will best complement the other information available to us. In combination with other data – for example, revenue data from the universal service support mechanisms – we expect to gain a comprehensive view of the development of local competition and broadband deployment as they evolve.<sup>177</sup>

62. As detailed below, the data collection is designed to assess competition in local telecommunications markets by focusing on service actually provided to end users and by examining the type of end users served (*e.g.*, residential and small business *versus* large business, institutional, and government).<sup>178</sup> The form also collects information about the relative importance of the three methods by which local exchange and exchange access services to an individual end user can be provided: solely over facilities the respondent has constructed; by using unbundled network elements provided by another LEC; and by reselling the services of another LEC. The data collection will further illuminate the pattern of local competition by asking about the presence of operational collocation arrangements in incumbent LEC switching centers. To monitor broadband deployment, we have similarly focused on lines actually provided to end users. We also emphasize, in the broadband section of the form, the type of technology used to deliver these services. We conclude that the answers to these questions are necessary to describe and understand the state of competition for local telephone services and the deployment of broadband services in diverse areas of the nation.

63. While some commenters encourage us to collect data on other measures,<sup>179</sup> we believe that the information we have chosen to collect best balances our need to collect targeted data with our desire to minimize reporting burdens. For example, we expect that trends in the selected data may become apparent when reported over time and should shed light on questions (*e.g.*, the speed with which competitive LECs can add customers) that might otherwise require separate information collection. We also believe that the local competition information we will collect is less extensive than the information some carriers make publicly available on their own initiative<sup>180</sup> and is not overly burdensome.

64. We emphasize that our focus in this data collection is on “last mile” facilities to end-user

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<sup>177</sup> For example, the analysis presented in FCC, Common Carrier Bureau, Industry Analysis Division, *Local Competition: August 1999* (rel. Aug. 31, 1999) uses detailed revenue data reported for purposes of the universal service support mechanisms along with information collected in local competition surveys to develop a richer and more complete analysis of the status of local competition.

<sup>178</sup> In *First Advanced Telecommunications Report*, we drew a distinction between deployment of broadband for large and medium-sized business customers as a group and deployment of broadband to “the consumer market” that we considered to consist of small business and residential customers. See *First Advanced Telecommunications Report*, ¶¶ 26-28.

<sup>179</sup> See, *e.g.*, ALTS Comments at 9 (number of requests pending for more than ninety days for which collocation has not been provided); ACA Comments at 13 (average number of homes passed; average number of customers per cable system node; average capital costs per subscriber); MediaOne Comments at 10 (number of switches deployed; number of active trunks connecting those switches to other carriers; number of working loops deployed; number of end user customers).

<sup>180</sup> SBC, for example, has made a number of *ex parte* presentations in which it reports data on more aspects of local competition than we propose to collect in this Notice. See, *e.g.*, letter with attachment titled “1998 Year-End Competition Report,” from Todd F. Silbergeld, SBC Communications Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, *In the Matter of Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121* (Feb. 17, 1999).

consumers. Because we do not want this data collection to become less comprehensive over time as a consequence of technological evolution or of consumer choice among service providers using different technologies, we decide to collect information about lines (or wireless channels) in service to consumers irrespective of technology deployed in the “last mile” and irrespective of technology deployed in the network, or networks, to which the customer’s line is connected. Thus, we will collect information, on a consistent basis, that is “transparent” to developments in transmission protocols or applications that may arise during this information collection.<sup>181</sup>

65. We describe in more detail, below, the type of data that we believe will best further our twin goals of collecting the most useful information while subjecting respondents to the minimum burden.

### 3. Data on Broadband Deployment

#### a. Broadband Lines and Wireless Channels in Service to Consumers

66. Part I.A. of the form collects information about the total number of one-way and two-way (“full”) broadband lines and wireless channels<sup>182</sup> that deliver in excess of 200 Kbps to a subscriber environment over the respondent’s own facilities, or over unbundled network elements (UNEs), special access lines, and other leased lines and wireless channels that the respondent has obtained from a communications service provider and equipped to provide broadband service.<sup>183</sup> As stated above,<sup>184</sup> by “full” broadband we mean lines and channels with information carrying capacity<sup>185</sup> in excess of 200 Kbps

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<sup>181</sup> Such developments might include greater substitution of Internet Protocol (IP) and other packet-switched services for circuit-switched telecommunications, including voice telephone calls. For example, telecommunications common carriers and non-carriers might decide to deploy packet-switching equipment in their networks, over time, to replace circuit-switching equipment. Additionally, non-regulated service providers, including Internet service providers, may vigorously market services that enable their customers to conduct voice conversations with members of the general telephone-using public. More generally, consumers may change the way they communicate in response to new service offerings made possible by new applications of technology, or to changes in relative prices. A consumer might, for example, replace some voice calls with e-mail messages or “postings” to a personal page on the World Wide Web. All these communications will, however, travel over a broadband or voice grade line (or wireless channel) that connects the end-user consumer’s premises to a network or networks. It is these lines and wireless channels that are the focus of this information collection, rather than the particular protocols or applications they may support.

<sup>182</sup> The preponderance of commenters agreed that the Commission should collect broadband data, and several commenters specifically supported the collection of data on one-way, as well as two-way, broadband lines and wireless channels. *See, e.g.*, Bell Atlantic Comments at 6; CPI Reply Comments at 9-10; NorthPoint Comments at 3. *But see* NCTA Comments at 2; Omnipoint Comments at 8.

<sup>183</sup> As noted *supra* ¶ 25, we exclude from reporting entities that only resell broadband services, *e.g.*, Internet service providers that only obtain DSL service from telephone companies or high speed data services from cable companies that is incorporated into a premium (higher speed) option for their Internet service.

<sup>184</sup> *See supra* ¶ 22.

<sup>185</sup> For purposes of this information collection, the information carrying capacity of a line or wireless circuit is the customer’s authorized maximum usage (“speed”) on that line or wireless circuit.

in both directions simultaneously.<sup>186</sup> We also require data on “one-way” broadband services (*i.e.*, services with greater than 200 Kbps information carrying capacity in one direction, but not both) because they offer significant benefits to consumers as compared to traditional voice grade lines.<sup>187</sup> We decline commenter suggestions that we adopt alternative definitions of one-way broadband or full broadband.<sup>188</sup> We do not seek to revisit our definition of advanced telecommunications capability in this proceeding, and we decide to focus this information collection on the one-way and full-broadband services that support an information carrying capacity that is based on our current definition.

67. We conclude that, as a central part of our inquiry into the deployment of broadband services, we must require respondents to report information about the types of facilities used to provide these services. Thus, we require reporting entities to break down the total number of broadband lines and wireless channels into mutually exclusive categories defined by the distribution technology to the subscriber environment:<sup>189</sup> asymmetric xDSL services; other traditional wireline services including symmetric xDSL services;<sup>190</sup> coaxial cable carrier systems (including hybrid fiber-coaxial systems); optical carrier (SONET) to the customer premises; satellite; terrestrial fixed wireless service including services provided over unlicensed spectrum; terrestrial mobile wireless service; and all other technologies, such as distribution over electric power lines. Collecting this information will allow us to determine how advanced telecommunications services are being delivered.

68. We also conclude that we must require respondents to report certain additional information – specifically, the percentages of reported lines that are used in certain ways – to assist us in monitoring the evolving structure of the broadband services market. We do not require respondents to calculate these percentages, which are discussed further below, based on precise counts performed solely for this information collection. Rather, respondents may report good faith estimates, within a margin of plus or

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<sup>186</sup> While a “full” broadband line or wireless channel must have information carrying capacity in excess of 200 Kbps in each direction, it need not be equally “fast” in each direction.

<sup>187</sup> According to C.E. Unterberg, Towbin, *Hughes Electronics (GMH)*, Jan. 27, 2000, DirecPC, a provider of satellite-based transmission service that has relied on a telephone return link, “currently has 100,000 subscribers and is having difficulty growing” and little information is now available on the planned two-way service (expected to cost \$50/month with rates of 400 Kbps down and 120-200 Kbps up; planned 4Q2000 product launch). Also, some ADSL service offerings that do not provide more than 200 Kbps in both directions may be attractive to residential and small business consumers. Our particular interest in the consumer and small business segment of the market for broadband services, and our view that it has been slow to develop in comparison to the large business market segment, are discussed in *First Advanced Telecommunications Report*, ¶¶ 28-33, 45-52. See also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order, FCC 99-355, CC Docket No. 98-147, ¶ 35 (rel. Dec. 9, 1999).

<sup>188</sup> See, *e.g.*, SBC Comments at 2 (include technologies and speeds above voice grade (56 Kbps/64 Kbps), while excluding ISDN or Digiline-type technologies); MediaOne Comments at 11.

<sup>189</sup> By subscriber environment we mean the subscriber or end-user premises.

<sup>190</sup> Part I of the form collects data on broadband services deployment, not on high-capacity facilities (or portions of facilities) that are “channelized” to provide voice grade telephony service. Therefore, if a high-capacity facility (or portion of a high-capacity facility) is being used to provide voice grade telephony service to end users, the number of DS0 circuits that can be provided over that high-capacity facility (or portion of facility) will be reported only in Part II of the form, which collects local competition data.

minus five percentage points, based on the best information that is available. However, if precise disaggregated counts of broadband lines and wireless channels do exist for another purpose, we require the respondent to use that information to calculate the percentage breakouts we require to be reported.

69. We decide that we should collect, for each of the technology categories specified in Part I.A. of the form, information about the portion of total broadband lines serving residential and small business customers as a group. We understand that many broadband providers will not routinely keep records by type of customer (*e.g.*, residential customer; small business; larger business).<sup>191</sup> Also, we expect that broadband providers that do distinguish among types of customers may not use uniform criteria to do so. For example, a broadband services provider operating in towns and smaller cities might use a threshold (*e.g.*, a particular number of broadband lines or wireless channels; a particular level of monthly or annual expenditures on broadband services) to distinguish between small and medium-size businesses that is different from the threshold that a broadband services provider operating in large cities would use. We wish to avoid inconsistencies in the reported data that might result from such differences among broadband services providers and to obtain, nevertheless, an indicator of broadband services deployment to residential and small business customers. We believe that broadband services providers will develop, in the normal course of business, an insight into the characteristics, needs, and service preferences of end-user customers and will come to understand, in particular, which types of broadband services are purchased *primarily* by residential customers.<sup>192</sup> We therefore require respondents to consider, for purposes of this information collection, the percent of total broadband lines and wireless channels used by residential and small business customers, as a group, to be synonymous with the percent of total broadband lines and wireless channels used to deliver those broadband service offerings that are, in the judgment of the respondent,<sup>193</sup> used *primarily* by residential consumers.

70. We would like to go further and track more precisely broadband deployment to particular types of entities singled out in section 706 – in particular, elementary and secondary schools and classrooms. We nevertheless conclude that, given our understanding that many broadband providers do not routinely keep records by type of customer, the burdens on respondents to identify deployment to these entities as such may be too high. Thus, to satisfy the section 706 directive concerning schools and classrooms, we will continue to monitor deployment to these groups through other means, for example, through our *Second Advanced Telecommunications NOI*.<sup>194</sup> Should we determine in the future that it would not be burdensome for providers to report this type of data, we may expand this collection to include such information.

71. To further assist us in monitoring the evolving structure of the broadband services market, we require respondents to report the percent of total broadband lines and wireless channels that the respondent provides specifically over its own facilities. We note that we require reporting from all facilities-based providers of broadband service, which we define, for purposes of this information collection, to include

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<sup>191</sup> See, *e.g.*, NorthPoint Comments at 4; Sprint Comments at 1. *But see* CPI Reply Comments at 16.

<sup>192</sup> LECs that offer volume discount tariffs for broadband services will report the number of lines in service under such tariffs. They will know the information carrying capacity and other characteristics of those services.

<sup>193</sup> As noted *supra* ¶ 68, we do not, as a general matter, expect respondents to calculate requested percentage breakouts based on exhaustive counts performed solely for this information collection.

<sup>194</sup> See *Second Advanced Telecommunications NOI*, ¶ 33. Through the *Second Advanced Telecommunications NOI*, we are making similar efforts to monitor deployment of broadband services to persons with disabilities. *Id.* at ¶¶ 31-32.

providers not only using their own facilities, but also providers using UNE loops, special access lines, or other lines or wireless channels that the respondent obtains from another communications service provider and equips as broadband lines. Thus, we are asking providers to report additional detail, in one portion of the form, about the portion of total broadband lines (or wireless channels) provided over *only* their own facilities, as opposed to providing over UNE loops, special access lines, or other lines or wireless channels that the respondent obtains from a communications carrier and equips as broadband lines. For purposes of this information collection, filers will classify as “their own facilities” those that they actually own and those they obtain the right to use from other entities as dark fiber or satellite transponder capacity. This information will assist us in monitoring the extent to which respondents are fully building out their own broadband facilities, rather than substantially relying on “last mile” facilities that they obtain from other communications carriers.

72. We also require respondents to report the percent of total broadband lines and wireless channels – which, to reiterate, the respondent provides over its own facilities, or over UNE loops, special access lines, or other leased lines and wireless channels that the respondent has obtained from another communications service provider and equipped as broadband – that the respondent bills directly to end users who are the ultimate consumers of the broadband service. This information will assist us in monitoring the importance, in the retail marketplace, of value-added service providers, such as Internet service providers, and others who may choose to include telecommunications as part of the information service they provide to end users.<sup>195</sup> Because we collect this information from respondents who build or equip leased facilities to provide broadband services, we decide, as previously noted, that we do not need to require resellers of advanced telecommunications services, including Internet service providers that incorporate advanced services into information services, to report broadband data.<sup>196</sup>

73. Finally, we require respondents to report two items of information about the portion of total lines and wireless channels they provide that are particularly “fast.” We decide we need this information to assist us in evaluating the evolving market for such services. We require respondents to report, specifically, the percent of broadband lines and wireless channels they provide with information carrying capacity greater than 200 Kbps in both directions, and also the percent of broadband lines and wireless channels they provide with information carrying capacity greater than 2 Mbps in both directions.<sup>197</sup> We understand that, in future years, the appropriate definition of broadband service may change as technology improves and consumer demand grows for more features and functions from residential broadband service. We believe that services at speeds over 200 Kbps and 2 Mbps are currently available through traditional wireline offerings – though most often deployed to businesses – and we conclude that the information we

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<sup>195</sup> Certain incumbent LECs are offering ADSL services under volume discount tariffs. These service offerings are designed to fit the needs of telecommunications carriers and value added service providers, such as Internet service providers, who wish to incorporate advanced services capability into their service offerings to consumers. (We have found that Internet service providers are not telecommunications carriers. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, FCC 99-330, CC Docket 98-147, ¶ 20 (rel. Nov. 9, 1999).) The volume sensitive service tariffs may require the bulk purchaser to provide typical retail services to the ultimate consumers, including provision of CPE and wiring to the end-user, customer service, marketing, ordering, installation, maintenance, repair, and billing and collections. *See Id.* at ¶ 15.

<sup>196</sup> If an Internet service provider owns its own facilities, then it will be subject to the same requirements to report broadband data as facilities-based carriers.

<sup>197</sup> As noted *supra* n.185, for purposes of this information collection the information carrying capacity of a line or wireless circuit is the customer's authorized maximum usage for that line or wireless circuit.

require respondents to report will enable us to detect the evolution of supply and demand for such future generations of broadband.

**b. Zip Codes in Which Broadband Lines and Wireless Channels are in Service**

74. For the reasons previously discussed,<sup>198</sup> we direct respondents to provide a list of the five-digit Zip Codes in which customers served by the broadband lines and wireless channels reported in Part I.A. are located.<sup>199</sup> This list is to be reported in Part V of the form.<sup>200</sup> We emphasize that we do not require respondents to report the number of broadband lines and wireless channels, or any other detailed information, for the individual Zip Codes on this list.

**4. Data on Local Competition**

**a. Voice-Grade Equivalent Lines in Service to End Users by LECs**

75. Part II of the form collects information from incumbent LECs and competitive LECs about the number of voice-grade equivalent<sup>201</sup> lines and fixed wireless channels<sup>202</sup> in service to provide local exchange or exchange access service. We also require respondents to provide information about the extent to which they use their own facilities in providing these lines or wireless channels, and the extent to which they use the facilities or services of other LECs in doing so. We emphasize that providers of mobile telephony services (including mobile telephony affiliates of LECs) do not report data in Part II, but instead report limited information about subscribers to mobile telephone service in Part III of the form.<sup>203</sup>

76. In Part II.A. of the form, we require reporting LECs to report the total number of voice-grade equivalent lines and fixed wireless channels they provide<sup>204</sup> to end-user customers. We also require LECs to report certain percentages of that total, which are discussed below, to assist us in monitoring the

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<sup>198</sup> See *supra* Section IV.C. Definition of Reporting Area.

<sup>199</sup> We require respondents to list Zip Codes that correspond to geographic areas in which broadband services are actually being used by end users. The list may be based on engineering information (such as maps showing active service areas) or on billing information, such as the Zip Codes of the service addresses of actual customers.

<sup>200</sup> See *supra* Section IV.C. Definition of Reporting Area (discussing the usefulness of this Zip Code data).

<sup>201</sup> Telephone lines terminating at most homes, and at many offices, are “voice grade” circuits. These are analog circuits having 3 to 4 kHz of bandwidth, the digital equivalent of which is a 64 Kbps circuit, or DS0. As noted *supra* n.190, higher capacity facilities can be “channelized” into DS0 circuits over which voice grade telephony service can be provided to end users. By “voice-grade equivalent lines/channels” we mean the number of DS0 lines/channels that could be delivered over the facility that terminates at the customer premises, *e.g.*, a DS1 circuit can be channelized to provide 24 DS0 circuits.

<sup>202</sup> That is, fixed wireless channels with a function similar to that of lines.

<sup>203</sup> Providers of mobile telephone service, as opposed to broadband service, also would not report data in Part I of the form.

<sup>204</sup> We intend that these reported lines are lines that are billed to the end user by the LEC or by the LEC’s non-carrier sales or billing agent.

evolving structure of the local services market.<sup>205</sup> We do not require respondents to calculate these percentages based on precise counts performed solely for this information collection. Rather, respondents may report good faith estimates, within a margin of plus or minus five percentage points, based on the best information that is available. However, if precise disaggregated counts of voice-grade equivalent lines and wireless channels do exist for another purpose, we require the respondent to use that information to calculate the percentage breakouts we require to be reported.

77. We wish to monitor developments affecting certain broad categories of customers. Therefore, we require LECs to report the percent of total voice-grade equivalent lines they provide to residential and small business customers, which we consider, for purposes of Part II of the form, to be identified by separate billing addresses to which fewer than four lines are in service.<sup>206</sup> We also wish to monitor evolving methods of competition and to avoid the double-counting of lines. We therefore require a respondent to report the percent of total voice-grade equivalent lines in service to end-user customers that it provides over its own facilities<sup>207</sup> and, separately, the percent of total lines that it provides over UNE loops obtained from other LECs. We also require a respondent to report the percent of total voice-grade equivalent lines it directly provides from incumbent LEC switching centers in which competitive LECs are collocated.<sup>208</sup> We conclude that the last estimate is required because we believe that local competition will be facilitated, particularly competition for residential and small business customers, if competing LECs can locate their equipment in the switching center that most directly serves the customer the carrier seeks to serve, and we therefore decide we should monitor the extent of such collocation.

78. In Part II.B. of the form, a reporting LEC will report the total number of voice-grade equivalent lines or wireless channels over which it provides voice telephone service to other telecommunications carriers for resale to end-user customers. We require a reporting LEC to break down this total into two categories: (1) lines and wireless channels provided under a Total Service Resale

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<sup>205</sup> As noted *supra* ¶ 68, we allow respondents to use best available data to estimate percentages, within a margin of error of plus or minus five percentage points, if they do not already collect the relevant detailed data.

<sup>206</sup> That is, for purposes of this information collection, we decide to use the definition of residential and small business customers that we adopted to distinguish between the mass market and the medium and large business market in *UNE Remand Order*. See *UNE Remand Order*, ¶¶ 292-294.

<sup>207</sup> Again, as stated above, we direct providers to classify as their “own facilities” those facilities that they actually own and those that they obtain the right to use from other entities as dark fiber or satellite transponder capacity.

<sup>208</sup> If the respondent is an incumbent LEC, this percentage is the portion of its total voice-grade equivalent lines that the incumbent serves from its switching centers in which any competitive LEC has an operational collocation arrangement. Because at least one competitor has invested to locate at least some facilities in such incumbent switching centers – and presumably has some ability to expand its service from those switching centers – this percentage provides an indication of the extent to which the incumbent LEC’s customer base is vulnerable to competitors using UNE loops as part of their competitive strategy. By contrast, the percentage reported by a competitive LEC refers to the portion of the competitive LEC’s customer lines that it serves via its own equipment collocated in incumbent LEC switching centers. Because a competitive LEC may choose to use UNE loops in combination with switching and/or transport provided by an incumbent LEC (*i.e.*, without collocating its own equipment in the incumbent LEC’s switching center), this percentage will not necessarily be the same as the reported percentage of lines the competitive LEC provides over UNE loops.

arrangement;<sup>209</sup> and (2) lines and wireless channels provided under other resale arrangements, such as resold “centrex” services. As we required with respect to Part II.A. of the form, the reporting LEC will also report certain percentages that indicate how the resold lines are used, so as to assist us to monitor the evolving structure of the local services market.<sup>210</sup>

79. The number of voice-grade equivalent lines and wireless channels in service to end-user consumers, reported by (incumbent and competitive) LECs in Part II.A. or Part II.B. of the form, will not include lines that the LEC uses to provide a telecommunications service to an Internet service provider and which the Internet service provider incorporates into a premium (higher speed) option for its Internet service. Rather, the LEC should report these as broadband lines in Part I of the form.

80. In Part II.C. of the form, a reporting LEC will report the total number of lines and wireless channels that it provides as UNE loops, special access lines, and private lines that connect end users to other telecommunications carriers.<sup>211</sup> We require these data to be reported in four categories: (1) lines and wireless channels provided as UNE loops in circumstances in which the respondent does not also provide switching for that line or wireless channel; (2) lines and wireless channels provided as UNE loops in circumstances in which the respondent also provides switching for the line or wireless channel;<sup>212</sup> (3) special access lines that the respondent does not provide as broadband; and (4) private lines that connect an end-user premises to a telecommunications carrier and that the respondent does not provide as broadband. For each of these four categories, we require the reporting LEC to report the structural indicators discussed above, *i.e.*, percent of lines serving residential and small business customers, *etc.* in those specified cases in which the particular item logically applies.<sup>213</sup>

81. In Part II.D. of the form, a reporting LEC will report limited information about the general types of technology it uses to provide local service. The LEC will report the percent of its total voice-grade equivalent lines and wireless channels in service that terminate at the end-user consumer’s premises over three types of facilities, characterized by technology: (1) technologies typically deployed by operators of cable TV systems, such as hybrid fiber-coaxial systems; (2) wireless; and (3) all other technologies,

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<sup>209</sup> Total Service Resale refers to services provided pursuant to section 251(c)(4) of the 1996 Act. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, FCC 96-325, CC Docket No. 96-98 (rel. Aug. 8, 1996) (*Local Competition Order*), ¶¶ 12, 863-864.

<sup>210</sup> As in Part II.A., respondents may report good faith estimates, within a margin of plus or minus five percentage points, based on the best information that is available. However, if precise disaggregated counts exists for another purpose, we require the respondent to use that information to calculate percentages. *See supra* ¶ 76.

<sup>211</sup> Note, however, that special access and private lines provided directly to end-user customers and reported as broadband service in Part I of the form are not reported in Part II.C.

<sup>212</sup> Combinations of unbundled loops, switches, and transport elements are often referred to as “the platform,” or UNE-platform. *See, e.g., UNE Remand Order*, ¶ 12.

<sup>213</sup> Respondents may report good faith estimates, within a margin of plus or minus five percentage points, based on the best information that is available. However, if precise disaggregated counts exists for another purpose, we require the respondent to use that information to calculate percentages. *See supra* ¶ 76.



including (but not limited to) copper twisted pair.<sup>214</sup>

82. We conclude that requiring LECs to report information about voice-grade equivalent lines and wireless channels in the detail set out in Part II of the form is necessary to obtain a reasonably complete picture of evolving local competition. For example, data reported by competitive LECs will enable us, for the first time, to analyze the degree to which these carriers serve customers over facilities that they own. Data reported by incumbent LECs will enable us to analyze the pattern of competitive LEC reliance on incumbent LEC resold services and unbundled network elements (nationwide and in any particular state) to provide local exchange and exchange access service to customers including, in particular, residential and small business customers. The accuracy and reliability of data will be enhanced, moreover, by the ability to compare data reported by incumbent LECs and by competitive LECs, and we may thereby avoid double-counting customer lines in assessing competitive market presence.

**b. Zip Codes in Which Voice Grade Lines Are in Service to End Users by LECs**

83. For the reasons previously discussed,<sup>215</sup> we require respondent LECs to provide a list of the five-digit Zip Codes in which customers served by the lines and wireless channels reported in Part II are located.<sup>216</sup> This list is to be reported in Part V of the form.<sup>217</sup> We emphasize that we do not require respondents to report the number of voice-grade equivalent lines in service, or any other detailed information, for the individual Zip Codes on this list. We also make clear that providers of mobile telephony services are not required to provide the Zip Code information in Part V of the form, because it would be particularly difficult for these providers to determine the location of their customers.

**c. Voice Grade Mobile Telephony Service Subscribers**

84. Part III of the form requires facilities-based mobile wireless firms to report the total number of voice telephony service subscribers served over their own systems, whether served directly or via resale by another entity.<sup>218</sup> For purposes of this information collection, respondents should consider the number of subscribers to be the number of revenue-generating active wireless telephony handsets.<sup>219</sup> We require respondents to report, as a single number, total subscribers to mobile telephony service provided via satellite, cellular, PCS, and other terrestrial mobile telephony services. We conclude that systematic data

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<sup>214</sup> Again, respondents may report good faith estimates, within a margin of plus or minus five percentage points, based on the best information that is available. However, if precise disaggregated counts exists for another purpose, we require the respondent to use that information to calculate percentages. *See supra* ¶ 76.

<sup>215</sup> *See supra* Section IV.C. Definition of Reporting Area.

<sup>216</sup> As was the case in Part I of the form, we require respondents to list Zip Codes that correspond to geographic areas in which local telephone services are actually being used by end users. The list may be based on engineering information (such as maps showing active service areas) or on billing information, such as the Zip Codes of the service addresses of actual customers.

<sup>217</sup> *See supra* Section IV.C. Definition of Reporting Area (discussing the usefulness of this Zip Code data).

<sup>218</sup> That is, we do not require mobile service resellers to report.

<sup>219</sup> *See supra* n.148 (concerning using the number of handsets as a proxy for the number of subscribers).

on the number of subscribers to voice grade mobile telephony services, when combined with publicly available information on mobile telephony rates, will provide a valuable insight into the extent that those mobile services are a competitive constraint on providers of wireline local exchange service. We also require respondents to provide a good faith estimate of the percent of total subscribers they bill directly, so as to obtain an indication of the extent to which resold service appears in the reported data.

85. Because we require reporting entities to file by state, we clarify that subscriber (*i.e.*, handset) counts should be reported based on the billing record address of the customer.<sup>220</sup> Although we recognize that the billing address may differ from the geographic area or areas in which the mobile telephony service is principally used, we believe that this will be the administratively easiest solution for reporting carriers and that it will still provide us with a reasonably accurate understanding of the pattern of mobile telephony deployment. We note that providers of mobile telephony services may not have billing address information for prepaid subscribers. We direct mobile telephony service providers to include prepaid subscribers in their state totals by making good faith estimates. Thus, we do not require providers to track and associate prepaid subscribers with individual phone numbers assigned.

## F. Confidentiality of Data

### 1. Background

86. In the Notice, we proposed to make available for public release all information collected pursuant to this information collection program.<sup>221</sup> Our reasoning for seeking release of the information was twofold. First, public availability allows consumers and experts the opportunity to review the data to ensure the accuracy of the information. Second, wide dissemination of the information promotes a more informed, more efficient market.<sup>222</sup> Therefore, it was our tentative conclusion that these factors strongly favored disclosure.<sup>223</sup> We reiterated in the Notice, however, that such a determination would not preclude reporting parties from seeking confidential treatment pursuant to Commission rules.<sup>224</sup>

### 2. Discussion

87. *Overview.* For all the reasons stated in the Notice, we continue to believe that the value of this data collection is significantly enhanced by making as much information as possible available to the public. At the same time, we conclude that we can achieve this goal in a manner that ensures the non-disclosure of confidential provider-filed data. We discuss, below, our affirmative policies for handling this information and we believe that these policies will allay commenter concerns that legitimately protectible information would be released to the public. We do not, in this Order, make findings about whether the data elements requested in the reporting form would satisfy the Commission's articulated standard for non-disclosure of

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<sup>220</sup> We reiterate that providers of mobile telephony services need not file the Zip Code data requested in Part V of the form.

<sup>221</sup> *Local Competition and Broadband Reporting Notice*, ¶75.

<sup>222</sup> *Id.* at ¶74.

<sup>223</sup> *Id.* at ¶74.

<sup>224</sup> *Id.* at ¶76.

competitively sensitive information,<sup>225</sup> but we do make clear that our rules for requesting non-disclosure of confidential information will be available to all filers of the FCC Form 477. Moreover, for purposes of this information collection, we take steps to simplify the procedures for requesting confidential treatment of data. Our rules for requesting non-disclosure of competitively sensitive information afford sufficient protection to providers and appropriately balance the concerns of parties submitting information with the interests of the public in obtaining access to that information. We also make clear that we will not release information that is the subject of non-disclosure requests until persons requesting confidential treatment are afforded all of the procedural protections provided by our confidentiality rules. We expect that these policies will allow us to accomplish our goal of making as much information as possible available to the public while ensuring that service providers can file data with confidence that any information found to be competitively sensitive under our rules will not be disclosed.

88. We note that several commenters express concern over the potential for competitive harm that release of the gathered data could cause and, in particular, about the ability of competitors to take the data submitted and tailor market strategies to quash nascent competition, protect areas that are being subjected to increased competition, or deploy facilities to defend strongholds.<sup>226</sup> Again, we believe that our confidentiality rules afford appropriate protection of legitimately protectible information, but we take additional steps to clarify our existing rules for treatment of competitively-sensitive data because we expect that some of the respondents to this form may be less familiar with Commission practices. The Commission's policy on confidential treatment of information submitted pursuant to a survey or study is to "allow survey and study respondents to request confidential treatment pursuant to Section 0.459 to the extent they can show by a preponderance of the evidence a case for non-disclosure consistent with the Freedom of Information Act (FOIA)."<sup>227</sup> Assessment of the confidentiality of the information is made on a case-by-case basis and action on confidentiality requests is routinely deferred until a request for inspection is made.<sup>228</sup>

89. We also recognize that there is considerable diversity in the way that individual service providers handle the data pertaining to their operations. Indeed, it is our understanding that some providers release considerable data about the nature of their operations, while others more closely safeguard such

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<sup>225</sup> See 47 C.F.R. § 0.459(b).

<sup>226</sup> See ALTS Comments at 12 ("The information sought by the Commission could be quite damaging when a new carrier has just entered a market and information about the number of lines or customers is released to competitors or the public...Many CLECs only offer service in a few geographic areas of a state. Therefore, the fact that the Commission may only be gathering information on a statewide basis does not necessarily negate the concerns that carriers would have with the potential release of the material."); Nextel Comments at 4 ("The information...would allow competitors to...follow the growth patterns of another CMRS carrier...and adjust their own strategies accordingly...[thus] expos[ing] carriers' business strategies to their competitors."); and AT&T Comments at 17 (stating that the information collection proposed in the Notice "would help reveal where a carrier's customers are located, how many there are, and even a carrier's capabilities.").

<sup>227</sup> *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report & Order, 13 FCC Rcd. 24816, ¶57 (rel. Aug 4, 1998) (1998 Confidentiality Order). 47 C.F.R. § 0.459.

<sup>228</sup> 1998 Confidentiality Order, ¶¶ 66-67 ("codifying the existing Commission practice of sometimes deferring action on requests for confidentiality if no request for inspection has been made" and noting that the Commission may, on its own motion, rule on requests for confidentiality).

data, including the type of data that we request in the reporting form.<sup>229</sup> We anticipate that providers will request confidential treatment for data filed where they deem it appropriate. In these cases, and in accordance with the Commission's rules, we will honor all parties' requests for confidential treatment of information that they identify as competitively sensitive until persons requesting confidential treatment are afforded all of the procedural protections provided by our confidentiality rules.<sup>230</sup> Moreover, in such cases, we agree with those commenters who suggest that we can aggregate much of the data -- for example, by carrier class and to the state level -- so that it does not identify the individual provider in our regularly published reports.<sup>231</sup>

90. We also take an additional step to reduce provider concerns about the release of information identified as competitively sensitive by making it easier for providers to request confidential treatment of their data. In particular, we place a check-box on the first page of the FCC Form 477 that allows providers to request non-disclosure of all or portions of their submitted data without filing at this point in the process the detailed confidentiality justification required by our rules.<sup>232</sup> Thus, where parties seek confidential treatment, they need only check the well-marked box on the first page of the form and provide a completed and a redacted version of the form, as explained fully in the instructions to the Form 477. If the Commission receives a request for, or proposes disclosure of, the information contained in the Form 477, the provider will be notified and required to make the full showing under our rules.<sup>233</sup> Given the unique nature of this data collection, these streamlined procedures for requesting non-disclosure should greatly improve the ability of smaller providers and providers that are less familiar with the Commission's rules to request confidential treatment of their data. We expect that this will lead to a greater level of compliance with this information collection and will give providers confidence that protectible data will not be published in our regular reports.

91. *Part I: Broadband Data.* Without making a prospective decision about whether these data elements would satisfy the Commission's standard for non-disclosure, we state our intention not to publish in our publicly-available reports individual provider-filed data for the broadband (Part I) portion of the

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<sup>229</sup> See, e.g., *supra* n.39. In our voluntary survey program, moreover, we observed that incumbent LECs did not often request confidentiality over data submitted, but competitive LECs, including those incumbent LECs who had entered new markets, did request confidentiality over the data submitted.

<sup>230</sup> Under the Commission's rules, the Commission "may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made pursuant to § 0.460 or § 0.461." 47 C.F.R. §0.459(d)(1). In deferring action, however, the Commission honors the parties request for confidential treatment "until [it] acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted." 47 C.F.R. §0.459(d)(1).

<sup>231</sup> ALTS Comments at 12 (suggesting provider class aggregation because even state level may reveal competitively sensitive information); CompTel Comments at 8 (suggesting either provider class or state level aggregation); MediaOne Comments at 13 ("MediaOne would prefer that any information submitted by CLECs and providers of high-speed data services be aggregated for public disclosure...on a state-by-state basis...").

<sup>232</sup> See 47 C.F.R. § 0.459(b).

<sup>233</sup> 47 C.F.R. § 0.459.

form, even where providers do not seek non-disclosure of this data.<sup>234</sup> At this time, we do not have sufficient evidence in the record to make a universally applicable decision about the competitive sensitivity of all of the Part I Broadband information for all providers, but we do agree to aggregate this information in a way that does not identify the individual provider data in our reports because commenters have made at least an initial showing that all or most of the data filed in these sections is typically held confidential by providers of these services. Our decision not to publish individual provider submissions from the Part I Broadband section reflects the particular and limited purposes of this data collection and our desire to maximize the level of voluntary compliance with the information collection. While this is a mandatory collection, we wish to collect as much, and as accurate, information as possible about the status of broadband deployment in a short period of time. We also, as part of this information collection, encourage service providers that are below the reporting thresholds to report data on a voluntary basis. Moreover, particularly with respect to the Part I broadband data, we conclude that we can achieve substantially the same public benefits by releasing this information in an aggregated fashion without any potential risk of competitive harm on the part of respondents. Given the unique nature of this information collection, we believe that this extra step will improve compliance, thus enhancing our understanding of the broadband market, without any material diminution in value of the information collection. Thus, we agree to publish in our regular reports data from Part I of the form only once it has been aggregated, for example by provider class,<sup>235</sup> regardless of whether parties request confidential treatment on the broadband portion of the form.<sup>236</sup>

92. *Parts II and III: Local Competition Data.* With respect to the data filed in Parts II and III of the form concerning wireline and wireless local telephone service, we will also report data in a manner that aggregates and does not identify the identity of providers where providers have requested non-disclosure of the data. We do not decide in advance to publish all of the data filed in Part II of the form in an aggregated fashion, however, because it is our experience that portions of this data are already made publicly available by the individual companies or from other sources. We note, for example, that the local competition market is characterized by incumbent firms that routinely make available their line count data, similar to that reported in Part II of the form. Similarly, competitive LECs in some states are required to submit line count data and this information is routinely made publicly available.<sup>237</sup> We expect that such providers reporting data in Part II of the form will not request non-disclosure of data that has already been made publicly available and that the Commission will be able to publish this data in our reports. Concerning the Part III mobile telephony data, we recognize that mobile telephony providers argue that state-by-state subscriber counts are not routinely made publicly available. We do not, however, have sufficient evidence to make an across-the-board finding at this time. Accordingly, providers submitting data concerning these

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<sup>234</sup> Providers reporting information in these portions of the form should, as a matter of course, comply with our procedures for requesting non-disclosure of any information that they identify as confidential to protect against requests for inspection filed by members of the public.

<sup>235</sup> For example, providers will identify the category that best describes their operations from a list that includes: cable coaxial, fiber, fixed wireless, mobile wireless, reseller, satellite, wireline local exchange carrier, or other. If the filer or any of its affiliates are an incumbent local exchange carrier, the provider must specify whether the filing covers its incumbent or non-incumbent operations.

<sup>236</sup> Parties should, however, still request confidential treatment for this information in accordance with the Commission's rules to protect their rights as to third party requests for the data submitted.

<sup>237</sup> See, e.g., Analysis of Local Exchange Service Competition in New York State, New York State Public Service Commission, available at [www.dps.state.ny.us/telanalysis.htm](http://www.dps.state.ny.us/telanalysis.htm) (data as of Dec. 31, 1998).

services may check the box on Form 477 to request confidential treatment of their data, which will afford them the protection of the Commission's confidentiality rules.<sup>238</sup>

93. We emphasize that apart from publicly available information, which we anticipate reporting, we intend to publish the local competition data in our local competition reports only to the level of detail necessary to provide an understanding of how local competition is developing. We therefore agree with those commenters who suggest that we can aggregate much of the data -- for example, by carrier class and to the state level -- so that it does not identify the individual provider in our regularly published reports. This reporting approach, as well as providers' ability to request confidential treatment under our rules, should maximize the level of voluntary compliance with the information collection.

94. *Part V: Zip Code Data.* In the particular case of Zip Code data (*i.e.*, the lists of Zip Codes where service is offered), the Commission intends to report information on Zip Codes served, but it will not release the identity of specific providers in a given Zip Code. Public release of Zip Code data in this manner is appropriate, we believe, because it does not reveal information about the actual subscribership levels for any particular provider, but only indicates the presence of one or more providers in the given Zip Code. Although we think it unlikely that any provider would consider this limited release to reveal competitively sensitive information, we do not limit parties' ability to seek non-disclosure of such data under the Commission's rules.<sup>239</sup>

95. *Sharing data with State Commissions.* Finally, because we wish to maximize the value of this information collection for states, we conclude that the Chief of the Common Carrier Bureau may release the information collected under this program to the state commissions, subject to certain conditions.<sup>240</sup> A state commission may view all data submitted on a carrier specific basis, by entities filing data for that commission's state, provided that the state has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure of any confidential information. However, where state laws afford less protection than federal FOIA laws, the higher federal standard will prevail.<sup>241</sup> We are aware that there are two states that have "open records" statutes that may prevent the state from providing confidential protection for sensitive provider information.<sup>242</sup> In these situations, we will work with these state commissions to enable them to obtain access to such information in a manner that addresses the state's need for this information and also protects the confidential nature of the provider's sensitive information. We anticipate that these actions will

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<sup>238</sup> If the Commission receives a request for, or proposes disclosure of, the information contained in the Form 477, the provider will be notified and required to make the full showing under our rules. 47 C.F.R. § 0.459.

<sup>239</sup> 47 C.F.R. § 0.459.

<sup>240</sup> 47 C.F.R. § 0.291.

<sup>241</sup> See 47 U.S.C. § 410(b); see also *Amendment of Parts 0 of the Commission's Rules with Respect to the Delegation of Authority to the Chief, Common Carrier Bureau*, 104 FCC 2d. 733, n.6 (rel. Apr. 11, 1986) (In discussing the treatment of information submitted pursuant to a joint audit, the Commission stated that it would release the information it obtained to state public utilities commissions "conditional upon a requirement that state participants are willing and able to treat commercial information according to our confidentiality rules and guidelines" and that "to the extent that the FOIA imposes a higher standard of confidentiality than a particular state law, our action...require[s] participants to adhere to the higher federal standard.").

<sup>242</sup> Texas and Georgia.

give state commissions a valuable and unique view into the state of local competition and broadband deployment in their states. In addition, we hope that this will further our goal of reducing the overall reporting burdens placed on entities in these markets by minimizing the need for additional information collection programs at the state level.

96. We conclude that these policies, taken as a whole, most effectively balance provider concerns with our broader goals for this proceeding. As stated in the Notice, by making the information available, consumers, investors, and policy makers will be better able to make informed decisions on the development of these markets. Such information has value because a better-informed marketplace promotes a more efficient marketplace. Also, by allowing public release of as much of the information as possible, associations, scholars, and others will be able to use the information in their independent analyses of Commission policies, thereby aiding the Commission in crafting regulations that address specific market problems and eliminating those regulations that have outlived their usefulness.

## **G. Electronic Filing**

### **1. Background**

97. In the Notice, we tentatively concluded that parties should submit information in an electronically readable format to aid Commission staff in utilizing the information more effectively.<sup>243</sup> We also stated that in order to minimize the burden of the information collection, reporting parties should submit their information using the Excel format, in lieu of a specially developed software program.<sup>244</sup> Further, we tentatively concluded that the spreadsheets that constitute the information collection would be posted at a unique location on the Common Carrier Bureau's Internet site for download.<sup>245</sup> Finally, we tentatively concluded that submissions would be filed over the Internet as an attachment to an e-mail message directed to a Commission e-mail account.<sup>246</sup>

### **2. Discussion**

98. We adopt the method proposed in the Notice for collection of the information through electronic filing except to modify the allowable methods of submission. Specifically, the form will be made available to reporting entities on the Common Carrier Bureau's website at <www.fcc.gov/broadband/data> and will utilize Excel 97 software, as well as other comparable spreadsheet software programs.<sup>247</sup> Carriers and other entities that must comply with this requirement may submit their completed forms to a specified e-mail address or forward to the Commission diskette copies. Regardless of whether the reporting entity e-mails its submission or mails diskette copies, an officer of the reporting entity must submit a "Certification

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<sup>243</sup> *Local Competition and Broadband Reporting Notice*, ¶¶ 77-81

<sup>244</sup> *Id.* at ¶¶ 77-78.

<sup>245</sup> *Id.* at ¶ 77.

<sup>246</sup> *Id.* at ¶ 78.

<sup>247</sup> The reporting form will be made available in Excel 97 format as well as a generic Lotus format that is compatible with other spreadsheet software such as earlier versions of Excel, Lotus 123, and Quattro Pro.

Statement” to the Commission attesting to the truthfulness of the data submitted.<sup>248</sup> We conclude that this filing system will ensure, for both the reporting entities and the Commission, that the burdens of the program are minimized and that unnecessary expenditures for compliance are not incurred. Also, by allowing diskette submissions, reporting parties seeking confidential treatment can further ensure that the information submitted is protected.

99. By utilizing commercially available software and the Internet, the program does not impose excessive filing-specific costs on parties. We determine that, in this instance, the costs of utilizing a specialized reporting system would outweigh the benefits of such a system.<sup>249</sup> Because certain smaller entities and entities not accustomed to reporting to the Commission may be asked to report under this program, we decide that the public interest is not best served by requiring carriers and other respondents to make significant investments to accommodate a specialized reporting system. Additionally, we will minimize our costs by eliminating the need to contract with data systems contractors to develop specialized software.

100. At the same time, we believe that some level of automation will be beneficial for both respondents and the Commission. By allowing respondents to complete the form electronically, added time associated with transferring data to paper is eliminated. Additionally, by using an electronic format, we will be better able to aggregate and incorporate the data into reports, as well as minimize error associated with transferring data manually from the filings. We therefore conclude that the e-mail/spreadsheet-based electronic filing system satisfies the needs of all parties and ensures that the burden of reporting is minimized.

101. As we stated in the Notice, we remain committed to making electronic filings and other electronic applications accessible to persons with disabilities to the fullest extent possible. We note that electronic filing is subject to program accessibility requirements of Section 1.1850 of our rules.<sup>250</sup> In addition, Congress has revised the requirements for access by persons with disabilities to federal information technology programs in the Workforce Investment Act of 1998.<sup>251</sup> We recognize that, in some instances, it may be difficult for persons with disabilities to access components of the proposed electronic filing. In particular, the accessibility of forms and certain types of electronic files raises complex technical issues. However, by utilizing commercially available software, instead of specially designed software,

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<sup>248</sup> Parties must use the “Certification Statement” that is provided in the instructions to the form. *See* Appendix B.

<sup>249</sup> For example, costs associated with training employees on a specialized software system with a single application cannot be redeployed by that employer to other tasks, whereas costs associated with training an employee on a generally applicable software system can be readily deployed to other tasks associated with the employer's needs. Thus, by avoiding “form-specific” investment requirements, the information collection program minimizes the impact of the program on respondents.

<sup>250</sup> *See* 47 C.F.R. § 1.1850.

<sup>251</sup> *Workforce Investment Act of 1998*, P.L. No. 105-220, 112 Stat. 936 (Aug. 7, 1998). Section 508 of the Act provides that persons with disabilities and non-disabled persons must have comparable access and ability to use technology and electronic information, and federal agencies must take steps to ensure such comparable access for persons with disabilities unless an undue burden would be imposed. If an undue burden would be imposed, the agency must provide an alternative means of access that allows for persons with disabilities to access and use the information.



users will be able to utilize “off the rack” software programs that assist persons with disabilities. While we will continue to work to make the program even more accessible, use of commercially available software ensures a greater level of access at this time than a Commission-developed software program.

## H. Survey Modification and Termination

### 1. Background

102. In the Notice, we tentatively concluded that for the information collection program to remain valuable, it might be necessary to make changes to the form, content, or reporting obligations.<sup>252</sup> Further, to ensure that the information collection does not become a permanent regulatory burden, we tentatively concluded that a plan for its termination should be determined at the outset.<sup>253</sup>

### 2. Discussion

103. We reiterate that the purpose of this undertaking is to assist the Commission during a critical transition period in evaluating both the development of competition for local telephone services and broadband deployment and the impact of our rules on those markets. We further conclude that the rapidly changing pace and dynamics of local competition and broadband deployment will necessitate changes to this information collection program in order to ensure its continuing value. We, of course, retain our authority to modify, eliminate, or expand this information collection, as necessary. We nevertheless take additional steps to make sure that this program does not outlive its usefulness or, alternatively, fail to keep step with developments in these critical areas.

104. In particular, we adopt a five-year sunset provision, which will terminate this program unless the Commission takes affirmative steps to preserve it. By establishing a date certain from the outset, we satisfy two of our stated goals, namely ensuring that the program does not outlive its usefulness and minimizing costs associated with the program. An annual or other timed review process would necessarily require the Commission to conduct rulemaking proceedings, which would impose associated costs on both the Commission and interested parties. In contrast, by adopting a specific sunset provision, such a proceeding will only be necessary if the Commission determines that it is necessary and desirable to maintain the information collection program beyond the five years. The five-year limitation will also allow the Commission to monitor development of local telephone competition and broadband deployment during this crucial period of market development. With competition for local telephone service in its fourth year since the 1996 Act and broadband deployment in an even more nascent state, the information that will be provided can offer insight into how these markets are developing and how our rules are either aiding or hindering that development. While some commenters offer more restrictive time periods for termination, such as an annual or other timed review process,<sup>254</sup> other commenters suggest that the program should have no predetermined sunset provision.<sup>255</sup> We determine that a program of shorter duration than five years

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<sup>252</sup> See *Local Competition and Broadband Reporting Notice*, ¶ 82.

<sup>253</sup> *Id.* at ¶ 83.

<sup>254</sup> Bell Atlantic Comments at 11 (suggesting a review in three years with a automatic sunset in 5 years); GTE Comments at 3 (suggesting a 3 year termination); USTA Comments at 7; PCIA Comments at 11 (sunset the program after two years), and Sprint Comments at 3 (suggesting a 2 year sunset).

<sup>255</sup> Telecommunications Resellers Association Reply Comments at 7.

would not allow the Commission to accurately assess the development of these markets over a long enough period of time to make meaningful use of the information. We note that adoption of a five-year sunset provision neither forecloses parties nor the Commission from seeking an earlier termination of the program.

Parties retain their right to petition the Commission for review of the program and the Commission can raise the matter *sua sponte*.<sup>256</sup> As noted by several commenters, the Commission will, of course, conduct a review of all its rules that apply to the operations or activities of any provider of telecommunications service pursuant to the biennial regulatory review process.<sup>257</sup>

## I. Outreach and Enforcement

105. The actions we take here will benefit not only the Commission and other policy makers, but also the firms that participate in this data gathering program. We believe that timely and reliable information about the state of broadband deployment and competition for local telephone services will enable us to evaluate the nature and impact of our existing regulation and to eliminate or modify regulation where warranted. Similarly, we believe that analysis of the data collected through this requirement may form the basis for the Commission to refrain from regulating nascent markets and to rely, instead, on market forces. To this end, we stress it is our intention to ensure that all firms subject to this reporting requirement participate. We note that the Commission has authority to collect this information pursuant to sections 4(i), 201, 218-220, 251-252, 303(r), 332, 403 of the Act,<sup>258</sup> as well as section 706 of the Telecommunications Act of 1996.<sup>259</sup> As stated in the Notice, although the 1996 Act did not confer on us plenary jurisdiction to regulate local exchange service, it did task us with important roles in opening up all telecommunications markets to competition.<sup>260</sup> We conclude that this data gathering falls squarely within the ambit of this authority. Moreover, we note that the Commission has authority pursuant to sections 502 and 503 of the Act to enforce compliance with its rules by fine or forfeiture.<sup>261</sup>

106. Beyond those firms that are required to report pursuant to this data collection, we also invite providers of local telephone service and broadband service to voluntarily complete and file the new FCC Form 477 even if they do not meet the thresholds for mandatory reporting. Particularly in the case of broadband reporting, we believe that the thresholds for mandatory reporting are set so that we will be able to detect at an early stage deployment by committed market participants. We nevertheless believe that there may be other, smaller providers that, were they to submit data on a voluntary basis, would significantly enhance our understanding of broadband deployment especially to niche markets. In our view, the more firms that report data to us, the more complete our understanding of broadband deployment and competition for local telephone services will be. As noted earlier, such an understanding is critical to our ability to assess developing markets and avoid unnecessary regulation.

107. We also intend to conduct industry outreach sessions to promote awareness of this mandatory

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<sup>256</sup> 47 U.S.C. § 161; 47 C.F.R. § 1.1.

<sup>257</sup> 47 U.S.C. § 161.

<sup>258</sup> 47 U.S.C. §§ 154 (i), 201, 218-220, 251-252, 303(r), 332, 403.

<sup>259</sup> 47 U.S.C. § 157 nt.

<sup>260</sup> *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

<sup>261</sup> 47 U.S.C. §§ 502, 503.

reporting requirement, encourage participation by exempt firms, and assist companies in completing the new FCC Form 477. These fora will be conducted in coordination with various industry associations in advance of the first filing of the form. We expect that these outreach efforts should increase compliance and minimize the burden on the broadband and local telephone service providers that will report this form for the first time on May 15, 2000.

## V. PROCEDURAL MATTERS

### A. Final Paperwork Reduction Act Analysis

108. As required by the Paperwork Reduction Act of 1995, the *Local Competition and Broadband Deployment Notice* invited the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in the Notice. On December 22, 1999, OMB approved the proposed information collection, as submitted to OMB.<sup>262</sup> In this Report and Order, we adopt the proposed Local Competition and Broadband Reporting form, but modify our proposal to reflect comments received from OMB and other commenters. The revised Local Competition and Broadband Reporting form is subject to approval by OMB.

109. As described above, the form that we adopt in this Order reflects our efforts to collect the information necessary to monitor the development of local competition and broadband to fulfill our statutory directives, while reducing to the lowest possible level the burden on those entities that must file the form. The categories of information requested from reporting entities ask for information that should be readily available to the reporting entities and should not require significant resources to collect.

### B. Final Regulatory Flexibility Act Analysis

110. As required by the Regulatory Flexibility Act (RFA),<sup>263</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Order. The FRFA is set forth as Appendix C. The Office of Public Affairs, Reference Operations Division, will send a copy of this Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

## VI. ORDERING CLAUSES

111. Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, this ORDER, with all attachments, is hereby ADOPTED.

112. IT IS FURTHER ORDERED that the requirements and regulations established in this Order shall become effective upon approval by OMB of the modified information collection requirements adopted

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<sup>262</sup> See Letter from Donald R. Arbuckle, Office of Management and Budget, to Judy Boley, Federal Communications Commission (Dec. 22, 1999).

<sup>263</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

herein, but no sooner than thirty days after publication in the Federal Register. The Commission shall place a notice in the Federal Register announcing the effective date of the requirements and regulations adopted herein.

113. IT IS FURTHER ORDERED that providers subject to the requirements and regulation established in this order shall complete and file the Local Competition and Broadband Reporting Form (FCC Form 477) no later than May 15, 2000 and semi-annually thereafter.

114. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Local Competition and Broadband Reporting Requirement Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

## APPENDIX A - RULES AMENDED

## AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

## PART 1 -- PRACTICE AND PROCEDURE

1. The authority citation for Part 1 is amended to read as follows:

AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154,(j), 155, 157, 225, and 303(r).

2. Subpart V of Part 1 is created to read as follows:

**Subpart V -- Implementation of Section 706 of the Telecommunications  
Act of 1996; Commission Collection of Advanced Telecommunications  
Capability Data**

**§ 1.7000 Purpose**

The purpose of this Part is to set out the terms by which certain commercial and government-controlled entities report data to the Commission concerning the deployment of advanced telecommunications capability, defined pursuant to 47 U.S.C. § 157 as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology," and the deployment of services that are competitive with advanced telecommunications capability.

**§ 1.7001 Scope and Content of Filed Reports**

- (a) Definitions: Terms used in this Subpart have the following meanings:
  - (1) "Full broadband lines or wireless channels" is defined as lines or wireless channels with information carrying capability in excess of 200 Kbps in both directions simultaneously.
  - (2) "One-way broadband lines or wireless channels" is defined as lines or wireless channels with information carrying capability in excess of 200 Kbps in at least one direction, but not both.
  - (3) "Facilities-based providers" is defined as those entities that provide broadband services over their own facilities or over Unbundled Network Elements (UNEs), special access lines, and other leased lines and wireless channels that the entity obtains from a communications service provider and equips as broadband.
  - (4) "Own facilities" is defined as lines and wireless channels the entity actually owns and facilities that it obtained the right to use from other entities as dark fiber or satellite transponder capacity.
- (b) All commercial and government-controlled entities, including but not limited to common carriers and their affiliates (as defined in 47 U.S.C. § 153 (1)), cable television companies, Multichannel Multipoint Distribution Service (MMDS/MDS) "wireless cable" carriers, other fixed

wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, which are facilities-based providers and are providing at least 250 full or one-way broadband lines or wireless channels in a given state, or provide full or one-way broadband service to at least 250 end-user consumers in a given state, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they exceed this threshold.

(c) Respondents identified in subsection (b) shall file the FCC Form 477 on diskette or via e-mail, as directed in the instructions to the FCC Form 477. Upon submission of each report, an original certification letter (as contained in the instructions to FCC Form 477) signed by the responsible official shall be mailed to the Commission.

(d) Respondents may make requests for Commission non-disclosure of provider-specific data contained in FCC Form 477 under § 0.459 of this chapter by so indicating on Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Common Carrier Bureau may release provider-specific information to a state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information.

(e) Respondents identified in subsection (b) shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5 percentage points is considered significant.

(f) Failure to file the FCC Form 477 in accordance with the Commission's rules and the instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.

### **§ 1.7002 Frequency of Reports**

Entities subject to the provisions of § 1.7001 shall file reports semi-annually. Reports shall be filed each year on or before March 1<sup>st</sup> (reporting data about the status of their broadband deployment as of December 31 of the prior year) and September 1<sup>st</sup> (reporting data about the status of their broadband deployment as of June 31 of the current year). Entities becoming subject to the provisions of § 1.7001 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter. Entities subject to the provisions of § 1.7001 shall make an initial filing of the FCC Form 477 on May 15, 2000 (reporting data about the status of their broadband deployment as of December 31, 1999).

\* \* \* \* \*

## **PART 20 -- COMMERCIAL MOBILE RADIO SERVICES**

1. The authority citation for Part 20 is amended to read as follows:

AUTHORITY: 47 U.S.C. 154, 157, 160, 251-254, 303, and 332 unless otherwise noted.

2. Subsection 20.15(b) of the Commission's rules is amended to read as follows:

**§ 20.15 Requirements under Title II of the Communications Act**

- (b) Commercial mobile radio service providers are not required to:

(1) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with §§ 1.781 - 1.814 and 43.21 of this chapter; except that commercial radio service providers that offer broadband service, as described in §1.7001(a) or mobile telephony are required to file reports pursuant to Subpart V of Part 1 and 43.11 of this chapter to the extent that they meet the thresholds as set out in §§ 1.7001(b) and 43.11(a). For purposes of this Subpart, "mobile telephony" is defined as real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls.

\* \* \* \* \*

**PART 43 - REPORTS OF COMMUNICATION COMMON  
CARRIERS AND CERTAIN AFFILIATES**

Part 43 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. The authority citation for Part 43 continues to read as follows:

AUTHORITY: 47 U.S.C. § 154; Telecommunications Act of 1996, Pub. L. 104-104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. Section 43.01 of the Commission's rules is amended to read as follows:

**§ 43.01 Applicability**

(a) \* \* \*

(b) Except as provided in paragraphs (c) and (d) of this section, carriers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of this part.

(c) \* \* \*

(d) Common carriers subject to the provisions of § 43.11 of this Chapter shall file data semi-annually. Reports shall be filed each year on or before March 1<sup>st</sup> (reporting data about their

deployment of local exchange services as of December 31 of the prior year) and September 1<sup>st</sup> (reporting data about their deployment of local exchange services as of June 31 of the current year). Common carriers becoming subject to the provisions of § 43.11 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter. Common carriers subject to the provisions of § 43.11 shall make an initial filing of the FCC Form 477 on May 15, 2000 (reporting data about their deployment of local exchange services as of December 31, 1999).

3. Section 43.11 of the Commission's rules is added to read as follows:

**§ 43.11 Reports of Local Exchange Competition Data**

(a) All common carriers and their affiliates (as defined in 47 U.S.C. §153 (1)) providing telephone exchange or exchange access service (as defined in 47 U.S.C. §153 (16) and (47)) or commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in section 20.15(b)(1) of this chapter), which provide at least 10,000 voice-grade equivalent lines or wireless channels or have at least 10,000 end-user consumers in a given state, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they exceed this threshold.

(b) Respondents identified in subsection (a) shall file the FCC Form 477 on diskette or via e-mail, as directed in the instructions to the FCC Form 477. Upon submission of each report, an original certification letter (as contained in the instructions to FCC Form 477) signed by the responsible official shall be mailed to the Commission.

(c) Respondents may make requests for Commission non-disclosure of provider-specific data contained in the Form 477 under § 0.459 of this chapter by so indicating on the Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Common Carrier Bureau may release provider-specific information to a state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information.

(d) Respondents identified in subsection (b) shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5 percentage points is considered significant.

(e) Failure to file FCC Form 477 in accordance with the Commission's rules and the instructions to Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.



**APPENDIX B - LOCAL COMPETITION AND BROADBAND REPORTING FORM**

FCC Form 477, March 2000  
Approved by OMB 3060-xxxx  
Estimated Average Burden Hours Per Response: \_\_ Hours

## Instructions for the Local Competition and Broadband Reporting Form (FCC Form 477)

### I. PURPOSE

The FCC Form 477 collects information on the deployment of broadband, local telephone and mobile telephony services from providers of these services. Data obtained from this form will be used to describe competition for local telecommunications services and deployment of broadband services. *See Local Competition and Broadband Reporting*, Order, FCC 00-114 (rel. March 30, 2000) for additional information about this collection.

### II. WHO MUST FILE THIS FORM?

Three types of communications service providers must file this form:

- **Providers of Broadband Services:**

Facilities-based providers of broadband services (including incumbent and competitive LECs, cable companies, fixed wireless providers, terrestrial and satellite mobile wireless providers, MMDS providers, utilities, and others) must complete and file the applicable portions of this form for **each state** in which they provide **250 or more** “full or one-way broadband” lines (or wireless channels) or provide “full or one-way broadband” service to **250 or more** end user consumers. The applicable portions of the form are: 1) the Cover Page; 2) Part I; 3) Part IV (if necessary); and Part V.

**Note:** an entity is considered a “facilities-based broadband provider” if it provides broadband services over facilities that it owns or provisions/equips as broadband. More specifically, “facilities-based providers” include entities that provide broadband services over their own facilities, or over unbundled network elements (UNEs), special access lines, and other leased lines and wireless channels that they equip as broadband.

- **Providers of Local Telephone Services:**

Incumbent and competitive local exchange carriers (LECs) must complete and file the applicable portions of the form for **each state** in which they provide **10,000 or more** “voice-grade equivalent lines (or wireless channels).” For purposes of this threshold, filers need only consider the number of voice-grade equivalent lines (or wireless channels) that would be reported in Line D.II-8(a) of the form. The applicable portions of the form are: 1) the Cover Page; 2) Part II; 3) Part IV (if necessary); and Part V.

- **Providers of Mobile Telephony Services:**

Facilities-based providers of mobile telephony services (see 47 C.F.R. 20.15(b)(1)) must complete and file the applicable portions of this form for **each state** in which they serve **10,000 or more** mobile telephony subscribers. Firms providing mobile telephony services using spectrum obtained via lease or other agreement with a Band Manager must also complete the applicable portions of

this form. The applicable portions of the form are: 1) the Cover Page; 2) Part III; 3) Part IV (if necessary).

**Note:** Mobile telephony is defined as real-time, two-way switched voice service that is interconnected with the public switched network using an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls.

**Important Note for All Providers about Calculating Reporting Thresholds:** Reporting thresholds are calculated based collectively on all commonly-owned and commonly-controlled affiliates operating in a given state. [See 47 U.S.C. § 153(1) (establishing a 10% equity interest as indicia of ownership).] That is, a provider must report for each state in which it and all affiliates collectively meet reporting thresholds. Such affiliates are, nevertheless, permitted to file forms for such states either combined or separately -- at their discretion.

### III. LINE-BY-LINE INSTRUCTIONS FOR COMPLETING FORM FCC 477

#### A. Cover Page -- Name and Contact Information (All Filers)

**Line 1:** Provide the name of the entity whose data is contained in the form.

**Line 2:** Select the category that best describes the type of technology that you use to provide services. Choose from Cable Coaxial, Fiber, Fixed Wireless, Mobile Wireless, Reseller, Satellite, Wireline Local Exchange Carrier, or Other.

**Line 3:** In general, you can combine operations in a state or report them separately. However, entities that are, or are affiliated with, an incumbent LEC must complete and file separate forms for their incumbent LEC and non-incumbent LEC operations. All filers should indicate whether this filing is for an incumbent LEC filing or a non-incumbent LEC filing.

**Line 4:** You must provide a single name, such as a holding company name, so that all affiliated or commonly operated companies can be identified. See "Important Note for All Providers about Calculating Reporting Thresholds" for more information on which companies should be considered to be affiliated or commonly-controlled. The Excel 97 spreadsheet version of the form (preferred) has a drop down box with standardized names. The Lotus 123 spreadsheet version of the form has a list of standardized names. If your company's name is not in the list, enter a name in the space provided.

**Line 5:** File a separate form for each state in which you meet the filing threshold. In this line, indicate the state for which you are filing data. For this purpose, treat the District of Columbia, Puerto Rico, and the U.S. Virgin Islands as states.

**Line 6:** Provide a contact name for the person who prepared this filing.

**Line 7:** Provide the telephone number and e-mail address for the contact person listed in Line 6.

**Line 8:** File a revised form if you discover mistakes. Use Line 8 to indicate whether this filing is an original or a revised filing.

**Line 9:** Indicate whether you request non-disclosure of some or all of the information reported in the Form 477. You may request non-disclosure if you believe that this information is privileged and

confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the filer. Note that if you request non-disclosure of some or all of the data, you must also file a public version of the form with such information redacted, as explained below in Sections IV-B and IV-C of the instructions.

**Line 10:** If you requested non-disclosure in Line 9, indicate whether the file is your complete or redacted filing. See Sections IV-B and IV-C of the instructions for information on preparing a redacted file.

## **B. Part I: Broadband (Broadband Providers Only)**

**INCLUDE in Part I:** In this section, broadband providers report information about their **full and one-way broadband lines/wireless channels** (for purposes of this section “lines”) in service to end-users. **Full broadband lines** are lines with information carrying capability in excess of 200 Kbps in both directions, simultaneously. **One-way broadband lines** are lines with information carrying capacity in excess of 200 Kbps in one direction (typically downstream) and less than or equal to 200 Kbps in the other direction (typically upstream). For purposes of this information collection, the information carrying capacity of a line or wireless circuit is the customer's authorized maximum usage (“speed”) on that line or wireless circuit. Filers must report broadband lines that they provide over their own facilities as well as those provided over unbundled network elements (UNEs), special access lines, and other leased lines that the filer equips as broadband.

**EXCLUDE in Part I:** broadcast cable television service and other multi-channel video programming; video-on-demand type service unless it is bundled with Internet-type access or uses Internet-type delivery protocols; and channelized services which restrict the customer to both transmitting and receiving data at 200 Kbps or less. Exclude lines that connect two locations of the same customer (not to be reported anywhere on FCC Form 477) and special access and private line services that you believe are used for exchange telephone service (to be reported in Part II-C). Where a provider does not know whether a high capacity line or wireless channel is being used as a broadband line or as a telephone service line, it should report that line in Part II-C (either Line C.II-6 or C.II-7, as appropriate). If you provide a line to another filer who is likely to include services provided over that line in its own report (for example, because the other filer equips the line or UNE as broadband), then that line should be reported in Part II-C of your filing.

**Report broadband lines on Lines I-1 through I-8** based on the technology employed by the part of the line that actually connects to the customer’s premises. If different technologies are used in different directions, then report the line based on the direction for which you provide the greatest bandwidth.

### **Lines**

**Important note about categorizing services to provide line counts:** In general, a single service offering should be reported in only one part of the form by a single reporter. In categorizing lines, base your response on the portion of the line or channel that connects to the customer's premise and the type of service that is provided. **Count only lines that are in service**, including lines that you provide to end users and lines that you provide to companies that in turn use those lines to provide broadband or telephone service to end users.

**Line A.I-1:** Report the number of broadband lines/wireless channels used to provide asymmetric xDSL service.

**Line A.I-2:** Report the number of broadband lines/wireless channels provided over other traditional wireline facilities including symmetric xDSL service.

**Line A.I-3:** Report the number of broadband lines/wireless channels provided over coaxial carrier systems (including hybrid fiber-coaxial systems).

**Line A.I-4:** Report the number of broadband lines/wireless channels provided over optical carrier (fiber to the end user).

**Line A.I-5:** Report the number of broadband lines/wireless channels provided over satellite.

**Line A.I-6:** Report the number of broadband lines/wireless channels provided over terrestrial fixed wireless.

**Line A.I-7:** Report the number of broadband lines/wireless channels provided over terrestrial mobile wireless.

**Line A.I-8:** Report the number of broadband lines/wireless channels provided over all other technologies.

### **Columns**

**Note about Reporting Percentage Breakouts:** Parts I, II, and III of Form 477 direct filers to provide percentages breakouts for specific line/wireless channel counts. If disaggregated counts exist for another purpose, then these must be used to calculate the requested percentage breakouts. However, filers are not expected to calculate percentages based on exhaustive counts performed solely for this task. Rather, where disaggregated counts do not exist, filers may provide good faith estimates of percentages based on the best information available to the filer. For example, if there is a pricing distinction between services provided to residential, small business and large business customers, then billing information should be used to estimate the percentage of lines provided to residential and small business customers. In the absence of such counts, however, filers should rely on studies done for other purposes, such as marketing and business plan information, demographic data, etc. A filer should conduct limited special studies only in the event that it cannot provide estimates that it reasonably expects to be accurate within plus or minus five percentage points.

**Column (a):** Report the number of total one-way and full-broadband lines/wireless channels in service that are used to provide service for each of the lines described above (Lines A.I-1 through A.I-8).

**Column (b):** Report the percentage of total lines from column (a) that are used by residential and small business customers (as opposed to large business, institutional, or other customers). In Part I, classify service provided to customers as residential and small business if they take broadband services normally associated with residential customers. Such lines could be classified as residential and small business based on marketing information, such as demographics associated with the geographic area where the lines are provided.

**Column (c):** Report the percentage of broadband lines and wireless channels from column (a) that are provided over your own facilities. Count as your own facilities, those facilities that you actually owned as well as facilities that you obtained the right to use from other entities as dark fiber or satellite transponder capacity (and that you used as part of your own system).

**Column (d):** Report the percentage of total lines from column (a) that are provided – that is, billed – directly to end users by the filer. End-users are residential, business, institutional and government customers who use the services for their own purposes and do not resell them to other entities. Classify lines/wireless channels as end-user lines if they are billed or marketed by your agents. For example, do not classify as end user, broadband lines/channels provided to Internet Service Providers that are incorporated into their premium Internet service options for provision to their end-user consumers.

**Column (e):** Report the percentage of total lines from column (a) that deliver to the end user consumer greater than 200 Kbps in both directions, simultaneously.

**Column (f):** Report the percentage of total lines from column (a) that deliver to the end-user consumer greater than 2 Mbps in both, directions simultaneously. Note that every line reported in this column would, by definition, also be reported in column (e). Thus, column (f) should not contain a greater percentage than column (e).

**C. Part II: Wireline and Fixed Wireless Local Telecommunications (Local Telephone Service Providers Only)**

**INCLUDE in Part II:** Report all **voice-grade equivalent local exchange service lines** and all lines that are used for exchange access services that you do not report in Part I. Include lines you provide using wireline as well as fixed wireless technologies. Include lines (or wireless channels) that you reported as broadband in Part I, but that your customer can switch between broadband and local exchange or exchange access service without you changing how the line (or wireless channel) is provisioned.

**EXCLUDE in Part II:** Do **not** report in Part II lines not yet in service, lines used for interoffice trunking, lines that connect two locations of the same customer, company official lines, or lines that you provide as a broadband service reported in Part I. Do not report in Part II transport lines between your switching center and Internet protocol, ATM or circuit switched networks, where you already are reporting the portion of the line between the end user and your switching center, even if you multiplexed those lines and provided higher capacity lines between your switching center and those networks.

**Note for reporting channelized service:** In Part II-A and Part II-B, providers are to report voice-grade equivalent lines. Count as one voice-grade equivalent line: traditional analog POTS lines, Centrex-CO extensions, and Centrex-CU trunks. Count lines based on how they are charged to the customer rather than how they are physically provisioned. For example, count Basic Rate (BRI) Integrated Services Digital Network (ISDN) lines as two voice-grade equivalent lines. Report 8 voice-grade equivalent lines if a customer buys 8 trunks that happen to be provisioned over a DS1 circuit. If a customer buys a DS1 circuit that is provided as channelized service, report 24 voice-grade equivalent lines, even if there is some indication that the customer is only using 8 of the derived lines. Lines reported in Part II, section C, however, should not be reported in voice-grade equivalents, but should reflect actual circuit counts.

**Note for competitive LECs providing local exchange service over hybrid fiber-coaxial cable television systems:** If you cannot determine the number of lines from your records, you are permitted to report the number of subscribers.

**Lines**

**Important note about categorizing services to provide line counts:** see this note, above, at page 3.

In **Lines A.II-1** (service provided to end users) and **Lines B.II-2 through B.II-3** (service provided to other carriers), report voice-grade equivalent lines (or wireless channels) used to provide voice telephone service. By “voice telephone service,” we mean local exchange or exchange access services that allow end users to originate and terminate local telephone calls on the public switched network, whether used by the end user for voice telephone calls or for other types of calls carried over the public switched network (for example, lines used for facsimile equipment). Filers report voice telephone service in terms of voice-grade equivalent lines or wireless channels. Thus, a voice-grade equivalent line (or wireless channel) is a line or channel that directly connects an end user to a carrier and allows the end user to originate and terminate local telephone calls on the public switched network. Voice-grade equivalent lines include high capacity lines that are channelized to provide voice-grade service. See “Note for reporting channelized service,” above, at page 5.

**Line A.II-1:** Report total voice-grade equivalent lines/wireless channels you provided directly to end-user consumers. Include lines provided to end users by your agents or under traditional marketing arrangements. For example, include lines provided to shared tenant service providers.

**Line B.II-2:** Report total lines/wireless channels you provided to other communications carriers under a Total Service Resale arrangement (i.e., provided pursuant to section 251(c)(4) of the Communications Act of 1934, as amended).

**Line B.II-3:** Report total lines/wireless channels you provided to other communications carriers under other resale arrangements.

In **Lines C.II-4 through C.II-7**, report the actual number of lines billed to the customer. Note that in Lines C.II-6 and C.II-7, the customer may be either an end user or another telecommunications carrier. Do not convert high capacity lines into voice-grade equivalent counts. Include high capacity lines that would meet the definition of broadband, but that are provided to another entity who is likely to report as broadband any services provided over those lines.

**Line C.II-4:** Report lines/wireless channels that you provided under a UNE loop arrangement, where you do not provide switching for the line. Include the high frequency portion of the loop if sold as a UNE.

**Line C.II-5:** Report lines/wireless channels that you provided under a UNE loop arrangement, where you also provide switching for the line.

**Line C.II-6:** Report special access lines that you do not provide as broadband.

**Line C.II-7:** Report private lines that connect an end-user premise to a telecommunications carrier and that you do not provide as broadband.

**Line D.II-8:** Report the total lines/wireless channels reported in Lines A.II-1, B.II-2, and B.II-3.

### **Columns**

**Column (a):** For **Lines A.II-1** (service provided to end users), **Lines B.II-2 through B.II-3** (service provided to other carriers), and **Line D.II-8** (total voice-grade equivalent lines in service), report voice-grade equivalent lines used to provide local exchange services. For **Lines C.II-4 through C.II-7** (UNEs, special access lines, and private lines), report the number of lines or wireless channels (*i.e.*, not the voice-grade equivalent of those lines or wireless channels) that are used for exchange access services that you do

not report in Part I.

**Note:** See note above, page 4, about reporting data on percentages.

**Column (b):** Report percentage of column (a) used for service billed to residential and small business customers. In Part II, classify lines provided to other carriers as residential and small business if the lines are ordered in quantities of fewer than four (4) voice-grade equivalent lines, if they are ordered as services rated as residential or small business, or based on marketing information, such as demographic information associated with the geographic areas where the lines are provided. Include as residential lines that you provide to a shared tenant service provider in an apartment building.

**Column (c):** Report percentage of lines and wireless channels in column (a) provided over your own facilities. Count as your own facilities, those facilities that you actually owned as well as facilities that you obtained the right to use from other entities as dark fiber or satellite transponder capacity (and that you used as part of your own system).

**Column (d):** Report percentage of column (a) provided over UNE loops.

**Column (e):** Report percentage of column (a) provided through incumbent LEC switching centers in which there is at least one collocation arrangement. In this column, incumbent LECs should estimate the percentage of their voice-grade equivalent lines and channels offered through such offices. Other reporting carriers should estimate the percentage of their voice-grade equivalent lines that are provided through use of a collocation arrangement. Thus, a CLEC providing lines on a pure resale basis would report 0% of lines offered in ILEC COLO offices, even if some of the resold lines were in offices in which some other entity had a collocation arrangement.

**Note:** For the purposes of completing Part II, an “ILEC COLO switching center” is an ILEC switching center in which one or more competing local exchange carriers (CLECs) has an operational collocation arrangement as defined in 47 C.F.R. §51.5. A switching center is a location containing one or more switches. Do not consider separate three-digit telephone prefixes as separate switching centers. Consider a remote as a separate switching center if a competing carrier could obtain a UNE loop **only** at the remote switch rather than at the host switch. This definition of a switching center is different from wire center based definitions of switching centers, which include all remote switch locations as switching centers. If collocation occurs only at a remote switch, treat all lines served at the remote as being provided at a COLO switch and treat lines at the host switch as not being provided at a COLO switch.

**Column (f):** For Line D.II-8, report percentage of column (a) carried over cable coaxial facilities used in the part of the line/wireless channel at the end user location.

**Column (g):** For Line D.II-8, report percentage of column (a) carried over fixed wireless facilities used in the part of the line/wireless channel at the end user location.

**Column (h):** For Line D.II-8, report percentage of column (a) carried over all other facilities, including but not limited to twisted copper pair, used in the part of the line/wireless channel at the end user location.

#### **D. Part III: Mobile Local Telephone (Mobile Telephony Providers Only)**

**Line A. III-1:** Report all mobile telephone subscribers served over your own facilities that give customers the ability to place or receive calls from the public switched telephone network. Include: satellite, cellular, and PCS telephone service & other terrestrial mobile services; and, units in service that combine voice



telephone with other services. Report only mobile telephony subscribers that you serve using spectrum licenses you own or manage, and not subscribers that you serve via resale of another firm's facilities.

**Note:** Exclude mobile services that customers cannot use to directly place calls to subscribers of ordinary telephone service, such as dispatch services and one-way or two-way paging services. Also exclude voice services that permit communications between only a narrow range of locations such as automobile units that permit drivers to communicate only with a specific road service.

**Column (a):** Report the total number of subscribers, as described above, in the state. Count as a subscriber a mobile handset, car-phone or other activated voice unit that has a unique phone number and that can place and receive calls from the public switched network. Mobile telephony subscriber counts by state should be based on billing addresses, not area codes of telephone numbers provided to subscribers.

**Column (b):** Report the percentage of subscribers in column (a) that you bill directly to end users (as opposed to those units in service that were provided through resellers or distributors for pre-paid service).

#### **E. Part IV: Explanations and Comments (All Filers, only if necessary)**

Complete Part IV if you wish to furnish any explanatory information with your data. Filers should identify the Part and Line to which their comment applies in the columns provided.

#### **F. Part V: Zip Code Listings (Broadband Providers and Local Telephone Service Providers)**

**Line V-1:** Report the 5 digit Zip Codes -- for this state -- in which you provide service to end-user locations.

**Column (a):** If you file broadband information in Part I, you must provide a list of Zip Codes in the state in which you provide broadband service.

**Column (b):** If you file local exchange service information in Part II, then you must provide a list of Zip Codes in the state in which you provide local exchange service. Providers of mobile telephony services need not provide this information.

**Note:** These Zip Code lists should correspond to areas in which service is actually being used by customers, rather than authorized territory, planned build-out, location of facilities, etc. The list can be based on engineering information (such as maps showing actual service territory) or on billing information, such as the Zip Codes of actual customers. If the latter approach is selected, please review the resulting list and delete any Zip Codes which clearly are out of your service territory and which appear only because the billing address is likely different from the service address.

### **IV. GENERAL INFORMATION**

#### **A. Where and When to File**

##### **1. When to File**

Service providers that meet the reporting thresholds must file the FCC Form 477 semi-annually:

- March 1<sup>st</sup> of each year: providers must file data as of December 31 of the preceding year.

- September 1<sup>st</sup> of each year: providers must file data as of June 30 of the same year.

## 2. Where to File

**Mail the Certification Statement and 3.5 inch floppy disk (containing your completed Form 477) to:** Industry Analysis Division, Room, 6-A220, 445 12<sup>th</sup> St., S.W., Washington, D.C. 20554.

Also, please also send a copy of the transmittal letter and files via e-mail to [FCC477@fcc.gov](mailto:FCC477@fcc.gov). You need not file via e-mail if you do not believe e-mail adequately protects data you consider proprietary. In the future, if e-mail submission proves satisfactory, we may eliminate the requirement to physically mail files.

## B. How to File

### 1. Preparation of Data Files

You must file your local competition and broadband deployment data using the electronic version available at <http://www.fcc.gov/formpage.html> or by contacting International Transcription Services (ITS) at (202) 857-3800. Form 477 will change over time, so filers must obtain the latest version of this spreadsheet each filing period.

The electronic version of Form 477 is provided in two formats: Excel 97 and Lotus 123 Version 5. The Excel 97 version contains drop-down boxes and some edit checks. The Lotus version should be usable in most spreadsheet programs. **Once you complete a filing, rename the file in accordance with instructions provided below.** If you wish to assert confidentiality for any information provided in the filing, you must provide a redacted version of the file, renamed in accordance with the instructions provided below. If you do not provide a redacted version of the file using the proper file names, you risk having confidential information released.

You may not move cells, insert or delete rows, or change the validation or formatting characteristics of any cell. **If the FCC cannot load your files into its databases as a result of modifications to the file, the file will be returned to you for correction and resubmission.** When a filer submits multiple Form 477s, the filer may place multiple spreadsheet files on a single 3.5 inch IBM format diskette. However, filers must save each Form 477 as a separate spreadsheet file. Do not submit multiple Form 477 worksheets within a single Excel 97 workbook or as multiple levels in a single Lotus file.

**Each file name must adhere to the following convention:**

SSTH#name.XLS or SSTH#name.WK4; where:

SS is the two letter post office abbreviation for the state.

I is a single character representing principal filing type. Since ILEC data must be filed separately from non-ILEC data, this convention distinguishes the files. In addition, this character is used to distinguish refiled and redacted data. Use the following codes:

- A = original filing for non-ILEC operations
- B = original filing for ILEC operations
- C = original redacted filing for non-ILEC operations
- D = original redacted filing for ILEC operations
- E = revised filing for non-ILEC operations
- F = revised filing for ILEC operations
- G = revised redacted filing for non-ILEC operations
- H = revised redacted filing for ILEC operations

H is the half of year, use:  
“J” for data as of June 30  
“D” for data as of December 31

# is a sequence number if a filer chooses to submit more than one file for a type of operations in a state. Use “1” if only one filing is made for the state.

name is the common name identified on Line 4 of the Cover Page. If you use software that limits file names to 8 characters plus a three character file extension, then use a three character name abbreviation and identify that name in the Certification Statement.

Example: MDAJ1Bell Atlantic.XLS

## 2. Additional Directions for Filing

Filers must send a transmittal letter and the attached certification statement to the Industry Analysis Division, Common Carrier Bureau<sup>1</sup> and to the Commission’s contract copier<sup>2</sup>. **The Certification statement must be signed in ink by an officer of the filer or one of the legal entities whose data is included.** An officer is a person who occupies a position specified in the articles of incorporation (or partnership agreement), and would typically be president, vice president for operations, vice-president for finance, comptroller, treasurer or a comparable position. If the filer is a sole proprietorship, the owner must sign the certification

### C. Requesting Confidentiality

Some information from the FCC Form 477 may be made publicly available. Any respondent to this form may submit a request that information on the FCC Form 477 not be made routinely available for public inspection by so indicating on Line 9 of the form and on the Certification Statement. See also 47 C.F.R. §§0.457, 0.459, 1.7001(d), 43.11(c); *Examination of the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, FCC 98-184 (rel. Aug. 4, 1998). Respondents seeking confidential treatment should provide a separate diskette containing a redacted version of all files. Note that these redacted files must be given different names from the complete filings, as specified above. Redacted data should be replaced with “xxxxxx” in the redacted data file.

<sup>1</sup> Industry Analysis Division; Rm. 6-A220; 445 12<sup>th</sup> St, SW; Washington, D.C. 20554.

<sup>2</sup> Currently International Transcription Services; 1231 20<sup>th</sup> St, NW; Washington D.C. 20036.

**D. Obligation to File Revisions**

Filers must submit a revised form if the filer discovers a significant error in the data. For counts, a difference amounting to 5 percent of the filed number must be refiled. For percentages, a difference of 5 percentage points is significant and must be refiled.

Revisions should consist of a certification statement and one or more electronic files. Carriers should refile all data for a state if one or more data element must be revised. A refiled Form 477 spreadsheet should contain all appropriate data for the state, not just the corrected figures. Note that files containing revisions must be given different names from the original filings, as specified above, Section IV-B.1.

**E. Compliance**

Service providers that are required to file the Form 477 but fail to do so may be subject to the enforcement provisions of the Communications Act and any other applicable law.<sup>3</sup>

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<sup>3</sup> 47 U.S.C. §§ 502, 503.

**V. CERTIFICATION STATEMENT****FCC Form 477 Local Competition and Broadband Reporting****Transmittal Letter and Certification Statement**

Mail to            Industry Analysis Division  
                      Rm. 6-A220  
                      445 12<sup>th</sup> St, SW  
                      Washington, D.C. 20554

This filing is an    (check one) \_\_\_original filing            \_\_\_revised filing

Organization name as it appears in all file names: \_\_\_\_\_

Number of files provided for this reporting period: \_\_\_\_\_

Year: \_\_\_\_\_            Data as of: [Check one: June 30\_\_\_;    December 31 \_\_\_ ]

I certify that I am an officer of \_\_\_\_\_; that I have examined the information contained in the data files either attached herein or transmitted electronically and that to the best of my knowledge, information and belief, all statements of fact contained in such files are true and that said files represent an accurate statement of the affairs of the above named respondent as of the following date: \_\_\_\_\_

If I have requested non-disclosure of some or all of the information in FCC Form 477 by so indicating on Line 9 of the form, I certify that this information is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the respondent.

PRINTED NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

Persons making willful false statements in the report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).

CONTACT PERSON \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_

FEDERAL COMMUNICATIONS COMMISSION

## VI. DISCLOSURE, PRIVACY ACT, PAPERWORK REDUCTION ACT NOTICE

The Privacy Act of 1974 and the Paperwork Reduction Act of 1995 require that when we ask you for information, we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit, or mandatory under the law. See Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. § 552a (e)(3), and the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

Our legal right to ask for this information is sections 1.7000-1.7002, 20.15, 43.01, 43.11 of the Federal Communications Commission's rules require. 47 C.F.R. §§ 1.7000-1.7002, 20.15, 43.01, 43.11. Your response is mandatory.

This collection of information stems from the Commission's authority under Sections 4(i), 201, 218-220, 251-252, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 218-220, 251-252, 303(r), 332, and 403, and section 706 of the Telecommunications Act of 1996. The data in the worksheet will be used to monitor the deployment of broadband services and the development of local telephone service competition. Selected information provided in the worksheet will be made available to the public in a manner consistent with the Commission's rules and orders.

We have estimated that each response to this collection of information will take, on average, \_\_\_ hours. Note that many companies will file multiple responses and that this estimated average reflects the fact that many companies will be required to file only a single service count that should be readily available from internal company records. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, enter the data in a Form 477 spreadsheet, prepare a diskette and certification for each state, and actually file the report. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to [jboley@fcc.gov](mailto:jboley@fcc.gov). Please **DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS.**

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection has been assigned an OMB control number of 3060-0816.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this form. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, your filing may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your worksheet may be disclosed to the Department of Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

Reporting entities failing to file the worksheet in a timely fashion may be subject to penalties under the Communications Act, including Sections 502 and 503 (b).

## APPENDIX C – FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Local Competition and Broadband Reporting Notice*. The Commission sought written public comment on the proposal in the Notice, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>2</sup>

### I. Need for, and Objectives of, the Local Competition and Broadband Reporting Order:

2. The Commission initiated this proceeding to determine whether it should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services as mandated by the Telecommunications Act of 1996. In this Order, we adopt rules to collect basic information about two important aspects of communications: the status of local telephone service competition and the deployment of "advanced telecommunications capability." The 1996 Act -- in particular, sections 251 and 271 -- tasked this Commission and the states with important roles in opening local telephone markets to competition. Moreover, the Commission needs timely and reliable information on broadband deployment given that section 706 of the 1996 Act requires the Commission to issue periodic reports on the state of broadband deployment. The information collected pursuant to this program will materially improve our ability to develop, evaluate, and revise policy in these critical areas and will provide valuable benchmarks not only for this Commission but for other policy makers and consumers.<sup>3</sup> Further, the information collection program adopted in this Order is the least burdensome means available to fulfill these statutory obligations.

### II. Summary of Significant Issues Raised by Public Comment in Response to the IRFA

3. In the IRFA, we stated that we would seek to minimize the burden imposed on smaller entities by establishing thresholds for reporting that balanced the needs of the Commission to receive data on the development of local competition and deployment of broadband against the burden such reporting places on smaller entities. In response to the Notice, the Commission received comments from 37 parties and held a series of *ex parte* meetings with potential respondents to the information collection adopted in this Order. Among those parties, only the Office of Advocacy, United States Small Business Administration (SBA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), commented specifically on the IRFA. We note that many other commenters raised issues

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See 5 U.S.C. § 604.

<sup>3</sup> For example, we expect that data gathered about the state of broadband deployment will assist us in our determination under section 706 about whether the deployment of advanced telecommunications services is reasonable and timely. Similarly, we expect that data about the state of competition for local telecommunications services will assist the Commission in evaluating whether it can eliminate, modify, or forbear from applying its rules designed to promote local competition. See Order, Section III. Local Competition and Broadband Reporting.

about the proposed rules and we encourage readers of this FRFA to consult the complete text of this Order, which describes in detail our analysis of commenter proposals.

4. In its comments to the IRFA, SBA expresses concern that the proposed threshold for reporting broadband data (1,000 broadband lines nationwide) may be set too low and, therefore, include a number of smaller entities that would be unduly burdened by the reporting requirement. As a result, SBA recommends that the Commission raise the reporting threshold to at least 5,000 lines nationwide<sup>4</sup> or “significantly reduce the burden on the small businesses that would be replying.” OPASTCO, in its comments, commends the Commission for its efforts to exempt smaller entities and urges the Commission to adopt an existing SBA definition of small companies: those with fewer than 1,500 employees.<sup>5</sup> We note that other commenters, while not in direct response to the IRFA, disagree with SBA and OPASTCO and urge the Commission to adopt its proposed reporting threshold.<sup>6</sup>

5. In an effort to balance the needs of the Commission with the costs our data gathering may place on smaller entities, the Commission has modified the thresholds for reporting and the frequency of filing reports, and other aspects of the requirements. We believe that these modifications satisfy SBA’s request that we significantly reduce the burdens for those small entities that must comply.<sup>7</sup> For example, by adopting a state level threshold (250 broadband lines in a given state), we ensure that reporting entities have a significant presence in a given state, before having to complete the form for that state. Moreover, we conclude that this threshold is set to allow the Commission to comply with Congress’ charge in section 706 of the 1996 Act to determine whether advanced telecommunications capability, commonly known as “broadband,” is being deployed to *all* Americans. In order to gain the comprehensive understanding -- as called for in section 706 -- of the broadband market, particularly in rural and inner-city areas and among demographic groups that are traditionally underserved, it is necessary to gather data from entities that are most likely to serve these areas and groups, which includes some smaller entities.

6. Among the other actions taken to reduce the overall burden on small entities, we decouple the broadband and local competition reporting thresholds.<sup>8</sup> In the Notice, the Commission tentatively concluded that any provider meeting the threshold requirement for the broadband part of the form would be required to complete the local competition part of the form, whether or not the entity met the threshold for that part, if the entity provides services listed in that part of the form. We note that the representatives of traditionally smaller providers opposed this linkage of reporting thresholds.<sup>9</sup> By eliminating this linkage, we reduce reporting burdens on these traditionally smaller providers.

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<sup>4</sup> SBA Reply Comments at 4. We note that SBA asks us to consider the comments of other commenters that oppose the proposed reporting threshold and we have done so. *See* ALTS Comments at 5; OPASTCO Comments at 3; PCIA Comments at 5. *See also* Order, Section III.B. Exempting Smaller Entities.

<sup>5</sup> OPASTCO Comments at 4, 8-9.

<sup>6</sup> *See, e.g.*, USTA Comments at 4-5; American Library Association Reply Comments at 5; Competition Policy Institute at 6-8.

<sup>7</sup> We have coordinated our size standards with the Small Business Administration.

<sup>8</sup> *R&O* at ¶36.

<sup>9</sup> *See, e.g.*, OPASTCO Comments at 4.



7. To further reduce the potential burden this data gathering program may place on smaller entities the Commission, in this Order, has also reduced the frequency of reporting from quarterly to semi-annually. In this regard, we accept the suggestions of many commenters that reducing the frequency of reporting is a measurable way to decrease the burden placed on reporting entities.<sup>10</sup> We necessarily decline SBA's invitation to adopt an annual filing basis, because we conclude that the rapidly changing nature of the local competition and broadband markets necessitate more regular data collections.<sup>11</sup>

8. Supporting the proposal in the Notice, SBA further encourages the Commission to collect information on a statewide basis. In this Order, we adopt our proposal and require providers to report data on a state-by-state basis.<sup>12</sup> To supplement this data, we ask providers of broadband and local exchange services to provide a list of the Zip Codes in which they serve at least one customer. We conclude that reporting scheme best balances our need to achieve geographically disaggregated information while minimizing burdens on all entities, including small entities.

9. Finally, we note SBA's suggestion that small carrier be allowed to file data on a voluntary basis. While the Commission concludes that it is necessary to adopt a mandatory reporting mechanism, we agree with SBA that smaller, exempted providers should be invited to file data on a voluntary basis. Thus, we encourage small providers to file the new FCC Form 477 even if they do not meet the reporting thresholds for mandatory reporting.<sup>13</sup>

10. Overall, we believe that our approach (*e.g.*, changing thresholds to the state level, decoupling the thresholds for different parts of the form, and reducing the reporting frequency to semi-annually) will result in a program that is not overly burdensome on reporting entities, and thus balances the concerns raised by SBA and other commenters with the Commission's need to gain a better understanding of developments in these markets.

### **III. Description and Estimate of the Number of Small Entities to Which Rules Will Apply:**

11. In the IRFA, the Commission included a description and estimate of the number of small entities to which its proposed rules would apply. No commenters addressed the issue. In this Order, the Commission decides that local exchange carriers and providers of mobile telephony services that serve 10,000 or more voice-grade equivalent lines or wireless channels (or mobile telephony subscribers) in a given state and any entity that provides 250 or more full or one-way broadband lines or channels in a given state, must report data about those services provided in that state.<sup>14</sup> Based on data available to it at present, the Commission estimates that approximately 200 of the nation's local exchange carriers and between 100-200 mobile telephony providers will be required to comply with the requirement. We do not have concrete data on which to base a precise estimate of the number of broadband providers that may be required to report. We set out below, however, a detailed description of the types of entities that may be required to comply with the reporting requirement and we detail our understanding of the number of small

<sup>10</sup> See Order, Section III.D. Frequency of Reports.

<sup>11</sup> See Order, Section III.D. Frequency of Reports.

<sup>12</sup> See Order, Section III.C. Definition of Reporting Area.

<sup>13</sup> See Order, Section III.I. Outreach and Enforcement.

<sup>14</sup> R&O at ¶¶39, 41.

entities within each of these categories.

12. To estimate the number of small entities that will be affected by the rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."<sup>15</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>16</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>17</sup> The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.<sup>18</sup> We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

13. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).<sup>19</sup> According to data in the most recent report, there are 4,144 interstate carriers.<sup>20</sup> These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

14. 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."<sup>21</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent

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<sup>15</sup> 5 U.S.C. § 601(6).

<sup>16</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 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 in the Federal Register."

<sup>17</sup> 15 U.S.C. § 632. See, *e.g.*, *Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

<sup>18</sup> 13 C.F.R. § 121.201.

<sup>19</sup> FCC, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 2000) (*Carrier Locator*). See also 47 C.F.R. § 64.601 et seq.

<sup>20</sup> *Carrier Locator* at Fig. 1.

<sup>21</sup> 5 U.S.C. § 601(3).

LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>22</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

15. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>23</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated."<sup>24</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by the decisions and rules in the Order.

16. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>25</sup> According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>26</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in the Order.

17. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator*

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<sup>22</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (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." See U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

<sup>23</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>24</sup> 15 U.S.C. § 632(a)(1).

<sup>25</sup> 1992 Census, *supra*, at Firm Size 1-123.

<sup>26</sup> 13 C.F.R. § 121.201, SIC Code 4813.

*Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>27</sup> The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).<sup>28</sup> According to our most recent data, there are 1,560 LECs and CAPs, 171 IXCs, 24 OSPs, and 388 resellers.<sup>29</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and rules in the Order.

18. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.<sup>30</sup> According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.<sup>31</sup> The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in the Order.

19. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. We will utilize the closest applicable definition under SBA rules -- which, for both categories, is for telephone companies other than radiotelephone (wireless) companies,<sup>32</sup> however, to the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other

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<sup>27</sup> 13 C.F.R. § 121.210, SIC Code 4813.

<sup>28</sup> See 47 C.F.R. § 64.601 *et seq.*; *Carrier Locator* at Fig. 1.

<sup>29</sup> *Carrier Locator* at Fig. 1. The total for resellers includes both toll resellers and local resellers.

<sup>30</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) ("1992 Census").

<sup>31</sup> 13 C.F.R. § 121.201, SIC Code 4812.

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

Mobile Services.<sup>33</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that may be affected by the decisions and rules in the Order.

20. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.<sup>34</sup> For Block F, an additional classification 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.<sup>35</sup> These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA.<sup>36</sup> No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

21. *SMR Licensees.* Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA,<sup>37</sup> and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. 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 less than \$15 million. Consequently, we estimate, for purposes of this FRFA, that all of the

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<sup>33</sup> *Carrier Locator* at Fig. 1.

<sup>34</sup> See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59, ¶¶ 57-60 (June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

<sup>35</sup> *Id.* at ¶ 60.

<sup>36</sup> *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

<sup>37</sup> See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in the Order.

22. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we conclude, for purposes of this FRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in the Order.

23. *220 MHz Radio Service -- Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.<sup>38</sup> According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>39</sup> Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition, some of which may be affected by the decisions and rules in the Order.

24. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>40</sup> We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, 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 \$3 million for the preceding three years.<sup>41</sup> An auction of Phase II licenses commenced on

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<sup>38</sup> 13 C.F.R. § 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

<sup>39</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

<sup>40</sup> 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997). The SBA has approved these definitions. See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

<sup>41</sup> 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

September 15, 1998, and closed on October 22, 1998.<sup>42</sup> 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.<sup>43</sup>

25. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

26. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.<sup>44</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).<sup>45</sup> We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>46</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.<sup>47</sup> Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.<sup>48</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of

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<sup>42</sup> See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

<sup>43</sup> See Wireless Telecommunications Bureau Grants 654 Phase II 220 MHz Licenses, Public Notice, DA 99-583 (rel. Mar 24, 1999); Wireless Telecommunications Bureau Conditionally Grants 23 Phase II 220 MHz Licenses and Announces It is Prepared to Grant Four Additional Phase II 220 MHz Licenses After Final Payment is Made, Public Notice, DA 990746 (rel. April 16, 1999); Wireless Telecommunications Bureau Grants One Phase II 220 MHz License and Conditionally Grants Three Phase II 220 MHz Licenses, Public Notice, DA 99-1111 (rel. Jun 7, 1999); Wireless Telecommunications Bureau Grants 221 Phase II 220 MHz Licenses, Public Notice, DA 99-2104 (rel. Oct. 7, 1999).

<sup>44</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>45</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 C.F.R. §§ 22.757, 22.759.

<sup>46</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>47</sup> The service is defined in section 22.99 of the Commission's rules, 47 C.F.R. § 22.99.

<sup>48</sup> 13 C.F.R. § 121.201, SIC Code 4812.

them qualify as small entities under the SBA definition.

28. *Private Land Mobile Radio (PLMR)*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities.<sup>49</sup> These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of, if any, small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs<sup>50</sup> indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules in this context could potentially impact every small business in the United States. We note, however, that because the vast majority of these licensees are end-users, not providers of telephony or broadband services, they would not be directly affected by the rules adopted in this Order.

29. *Fixed Microwave Services*. Microwave services include common carrier,<sup>51</sup> private-operational fixed,<sup>52</sup> and broadcast auxiliary radio services.<sup>53</sup> At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will utilize the SBA's definition applicable to radiotelephone companies -- *i.e.*, an entity with no more than 1,500 persons.<sup>54</sup> We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

30. *Offshore Radiotelephone Service*. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.<sup>55</sup> At present, there are approximately 55 licensees in this service. We are unable at this time to

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<sup>49</sup> See 47 C.F.R. § 20.9(a)(2) (noting that certain Industrial/Business Pool service may be treated as common carriage service).

<sup>50</sup> Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

<sup>51</sup> 47 C.F.R. § 101 *et seq.* (formerly, Part 21 of the Commission's rules).

<sup>52</sup> Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>53</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. § 74 *et seq.* 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.

<sup>54</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>55</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001 - 22.1037.



estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location 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. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules adopted in the Order includes these eight entities.

32. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.<sup>56</sup> According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million. The Census report does not provide more precise data.<sup>57</sup>

33. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

34. *Cable services or systems:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.<sup>58</sup> This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.<sup>59</sup>

35. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer

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<sup>56</sup> 13 C.F.R. § 121.201, SIC Code 4899.

<sup>57</sup> *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC Code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration.)

<sup>58</sup> 13 C.F.R. § 121.201, SIC 4841.

<sup>59</sup> *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

than 400,000 subscribers nationwide.<sup>60</sup> Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.<sup>61</sup> Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

36. The Communications Act also contains a definition of 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 \$250,000,000."<sup>62</sup> The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.<sup>63</sup> Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450.<sup>64</sup> We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,<sup>65</sup> and thus 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. It should be further noted that recent industry estimates project that there will be a total of 66,000,000 subscribers, and we have based our fee revenue estimates on that figure.

37. *Multipoint Distribution Systems (MDS)*: The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years.<sup>66</sup> This definition of a small entity in the context of MDS auctions has been approved by the SBA.<sup>67</sup> The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified

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<sup>60</sup> 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

<sup>61</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

<sup>62</sup> 47 U.S.C. § 543(m)(2).

<sup>63</sup> 47 U.S.C. § 76.1403(b).

<sup>64</sup> Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

<sup>65</sup> We do receive such information on a case-by-case basis only 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 76.1403(b) of the Commission's rules. See 47 C.F.R. § 76.1403(d).

<sup>66</sup> 47 C.F.R. § 21.961(b)(1).

<sup>67</sup> See 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, MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

as small entities.<sup>68</sup>

38. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts.<sup>69</sup> This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules adopted in the Order.

39. *Electric Services (SIC 4911)*: The SBA has developed a definition for small electric utility firms.<sup>70</sup> The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992.<sup>71</sup> The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.<sup>72</sup>

40. *Electric and Other Services Combined (SIC 4931)*: The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service.<sup>73</sup> The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992.<sup>74</sup> The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.<sup>75</sup>

41. *Combination Utilities, Not Elsewhere Classified (SIC 4939)*: The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified.<sup>76</sup> The

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<sup>68</sup> One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

<sup>69</sup> 13 C.F.R. § 121.201.

<sup>70</sup> Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).

<sup>71</sup> 13 C.F.R. § 121.201, SIC 4911.

<sup>72</sup> U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D (Bureau of Census data under contract to the Office of Advocacy of the SBA).

<sup>73</sup> Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).

<sup>74</sup> 13 C.F.R. § 121.201, SIC 4931.

<sup>75</sup> U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D (Bureau of Census data under contract to the Office of Advocacy of the SBA).

<sup>76</sup> Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).

Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992.<sup>77</sup> The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.<sup>78</sup>

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

42. The very focus of this proceeding is whether the Commission should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services. The Order concludes that the Commission should undertake such a data collection and that local exchange carriers and providers of mobile telephony services that serve 10,000 or more voice-grade equivalent lines or channels statewide, and any entity that provides 500 or more full or one-way broadband lines or channels statewide, should report specifically targeted information.<sup>79</sup> The Order sets out in detail the types of providers that should report,<sup>80</sup> exempting smaller providers,<sup>81</sup> frequency of reports,<sup>82</sup> data to be reported,<sup>83</sup> and method of reporting.<sup>84</sup> In particular, the Commission concludes in the Order that given the comprehensive data to be obtained from large and medium-size providers, it can exempt most small providers from completing the survey without materially affecting its ability to assess the development of local competition and the deployment of broadband services.<sup>85</sup>

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

43. The most significant step taken to minimize the impact of these rules on small entities is the adopt of reporting thresholds. For example, the Commission makes specific provision to exempt most smaller carriers from the requirement to report local telephone competition data. The Commission concludes that carriers with fewer than 10,000 statewide voice-grade equivalent lines or channels (or mobile telephony subscribers, in the case of mobile telephony providers) should be exempted from the reporting requirement for that state.<sup>86</sup> Based on this exemption, the Commission estimates that only

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<sup>77</sup> 13 C.F.R. § 121.201, SIC 4939.

<sup>78</sup> U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D (Bureau of Census data under contract to the Office of Advocacy of the SBA).

<sup>79</sup> See *R&O* Section III.A., Types of Entities that Must Report.

<sup>80</sup> See *id.*

<sup>81</sup> See *R&O* Section III.C., Exempting Smaller Entities.

<sup>82</sup> See *R&O* Section III.B., Frequency of Reports.

<sup>83</sup> See *R&O* Section III.E., Data to be Reported.

<sup>84</sup> See *R&O* Section III.G., Electronic Filing.

<sup>85</sup> See *R&O* Section III.C. Exempting Smaller Entities.

<sup>86</sup> See *id.*

approximately 200 of the nation's largest local exchange carriers would remain subject to the requirement.<sup>87</sup> Similarly, the Commission exempts the smallest broadband providers by adopting a broadband reporting threshold. Thus, firms that provide fewer than 500 full or one-way broadband lines or wireless channels in a given state need not report data for that state.<sup>88</sup>

44. Among significant alternatives, the Commission considered whether it might rely on publicly available data or voluntary surveys, in lieu of a mandatory data collection program.<sup>89</sup> The Commission concludes other publicly available information sources present less than complete pictures of actual conditions and trends in developing local service markets and in the deployment of broadband. Further, the Commission considered the need for, and size of, its exemptions for small entities.<sup>90</sup> The Commission concludes that the thresholds adopted will allow it to exempt most small carriers from completing the form without materially affecting its ability to assess the development of local competition and the deployment of broadband services. The Commission also accepted other suggestions that will reduce burdens on entities, including decoupling reporting thresholds, adopting a less frequent reporting schedule, and allowing providers to report on a state-by-state basis.<sup>91</sup>

45. Report to Congress. The Commission will send a copy of the Local Competition and Broadband Reporting Requirement Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the Local Competition and Broadband Reporting Requirement Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Local Competition and Broadband Reporting Requirement Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

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<sup>87</sup> *See id.*

<sup>88</sup> *See id.*

<sup>89</sup> *See R&O* Section III.

<sup>90</sup> *See R&O* Section III.C. Exempting Smaller Entities.

<sup>91</sup> *See R&O*, III.B., C. D.; *see also* FRFA, Section II, *supra*.

**APPENDIX D - LIST OF COMMENTERS****Commenters in CC Docket No. 99-301****Comments:**

Allegiance Telecom, Inc. (Allegiance)  
American Cable Association (ACA)  
Arkansas Public Service Commission (Arkansas Commission)  
Association for Local Telecommunications Services (ALTS)  
AT&T Corporation (AT&T)  
Bell Atlantic Mobile, Inc. (BAM)  
Bell Atlantic Telephone Companies (Bell Atlantic)  
BellSouth Corporation (BellSouth)  
Cellular Telecommunications Industry Association (CTIA)  
Competitive Telecommunications Association (CompTel)  
Frontier Communications (Frontier)  
General Services Administration (GSA)  
GTE Service Corporation (GTE)  
MediaOne Group, Inc. (MediaOne)  
National Cable Television Associates (NCTA)  
National Rural Telecom Association (NRTA)  
National Telephone Cooperative Association (NTCA)  
Nextel Communications, Inc. (Nextel)  
NextLink Communications, Inc. (NEXTLINK)  
NorthPoint Communications, Inc. (NorthPoint)  
Omnipoint Communications, Inc. (Omnipoint)  
Organization for the Promotion and Advancement of  
    Small Telecommunications Companies (OPASTCO)  
Personal Communications Industry Association (PCIA)  
Prism Communication Services, Inc. (Prism)  
SBC Communications, Inc. (SBC)  
Sprint Corporation (Sprint)  
State of Tennessee Office of the Attorney General (Tennessee OAG)  
Telec Consulting Resources, Inc. (Telec)  
Telecommunications Resellers Association (TRA)  
Teligent, Inc. (Teligent)  
United State Telecom Association (USTA)  
U S WEST Communications, Inc. (U S WEST)  
Winstar Communications, Inc. (Winstar)

**Reply Comments:**

ALLTEL Communications, Inc. (ALLTEL)  
American Library Association (ALA)  
AT&T Corporation (AT&T)  
BellSouth Corporation & BellSouth Telecomm'ns, Inc. (BellSouth)  
Competition Policy Institute (CPI)  
General Services Administration (GSA)  
Office of Advocacy, U.S. Small Business Administration (SBA)  
Personal Communications Industry Association (PCIA)

Telecommunications Resellers Association (TRA)  
United States Telecom Association (USTA)  
Winstar Communications, Inc. (Winstar)

**Commenters in CC Docket No. 91-141, CCB-IAD File No. 98-102**

**Public Notice Comments:**

Allegiance Telecom, Inc.  
Association for Local Telecommunications Services (ALTS)  
Ameritech  
AT&T Corp.  
Bell Atlantic  
BellSouth  
General Services Administration (GSA)  
GTE  
GVNW Inc./Management (GVNW)  
KMC Telecom, Inc.  
MCI Telecommunications Corporation (MCI)  
MediaOne Group, Inc. (MediaOne)  
National Telephone Cooperative Association (NTCA)  
Rural ILECs (Lexcom Telephone Company, United Telephone Association, Clear Lake Independent Telephone Company, Ventura Telephone Company, and Webster-Calhoun Cooperative Telephone Association)  
SBC Communications Inc. (SBC)  
Southern New England Telephone Company (SNET)  
Telecommunications Resellers Association (TRA)  
Teleport Communications Group Inc. (TCG)  
United States Telephone Association (USTA)  
U S WEST Communications, Inc. (U S WEST)

**Public Notice Reply Comments:**

Allegiance Telecom, Inc.  
Association for Local Telecommunications Services (ALTS)  
Ameritech  
AT&T Corp.  
Bell Atlantic  
BellSouth  
General Services Administration (GSA)  
KMC Telecom, Inc.  
MCI Telecommunications Corporation (MCI)  
National Telephone Cooperative Association (NTCA)  
SBC Communications Inc. (SBC)  
Telecommunications Resellers Association (TRA)  
United States Telephone Association (USTA)  
U S WEST Communications, Inc. (U S WEST)