

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

In the Matter of)
)
Development of Nationwide Broadband Data to) WC Docket No. 07-38
Evaluate Reasonable and Timely Deployment of)
Advanced Services to All Americans, Improvement)
of Wireless Broadband Subscribership Data, and)
Development of Data on Interconnected Voice over)
Internet Protocol (VoIP) Subscribership)

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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dissenting in part, and issuing a statement.

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I. INTRODUCTION

1. In this Report and Order (Order) and Further Notice of Proposed Rulemaking (Further Notice), we amend the FCC Form 477 data collection in several respects to collect additional data on broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”¹

2. To increase the precision and utility of our collected data, we revise our current methods and procedures for collecting information on broadband services. We modify Form 477 to require broadband providers to report the number of broadband connections in service in individual Census Tracts.² In order to generate an even more complete picture of broadband adoption in the United States, we propose additional methods to add to the data reported by Form 477 filers, including a voluntary household self-reporting system, and a recommendation to the Census Bureau that the American Community Survey questionnaire be modified to gather information about broadband availability and subscription in households.³

3. To further improve the quality of collected data, we adopt three additional changes to FCC Form 477. First, we require providers to report broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speeds.⁴ These new speed tiers will better identify services that support advanced applications. Second, we amend reporting requirements for mobile wireless broadband providers to require them to report the number of subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice.⁵ Finally, we require providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information on Form 477.⁶

4. Additionally, in a Further Notice of Proposed Rulemaking, we seek comment on developing a

¹ 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)). Appendix A contains a list of the revised rules.

² Paras. 10-16, *infra*.

³ Paras. 17-18, *infra*.

⁴ Paras. 19-22, *infra*.

⁵ Paras. 23-24, *infra*.

⁶ Paras. 25-31, *infra*.

nationwide broadband availability mapping program.⁷ We also seek comment on ways in which we might effectively capture information about actual, delivered speeds of broadband Internet access services,⁸ and about prices of broadband services.⁹ In addition, we seek comment on whether to require Form 477 filers to report the number of voice telephone service connections either at the ZIP Code level or on the basis of another geographic unit.¹⁰ Finally, we seek comment on methodologies for consumer broadband surveys,¹¹ and on methods for preserving confidentiality when sharing the information collected on Form 477.¹²

II. BACKGROUND

5. The FCC began collecting data from broadband Internet service providers using Form 477 in May 2000 as a means to help the Commission and the public understand the extent of broadband deployment nationwide. Broadband service providers and local telephone service providers have reported data numerous times since then.¹³ The reporting entities include incumbent and competitive local exchange carriers (LECs), operators of terrestrial and satellite wireless facilities, cable companies, municipalities, and any other facilities-based providers of broadband connections to end users.¹⁴

6. To date, facilities-based providers of broadband connections have reported state-level information about the number of broadband connections in service, and incumbent LECs and cable companies have reported the extent to which they offer broadband connections to households in the areas where they provide local telephone or cable TV service.¹⁵ In addition, providers of wired and fixed wireless broadband connections have reported technology-specific lists of the 5-digit ZIP Codes in which the provider has at least one broadband service subscriber, while mobile wireless broadband providers have reported lists of the ZIP Codes that best represent their broadband service areas.¹⁶

7. Based in large part on analysis of Form 477 data, reports published by the Commission have demonstrated significant and steady progress in broadband deployment and adoption nationwide.¹⁷ As of June 2007, Form 477 data show that more than 99% of all ZIP Codes had some broadband connections in service, and that 100.9 million broadband connections were in service, of which 65.9 million connections were designed to serve primarily residential end users.¹⁸ When compared to similar data gathered for

⁷ Paras. 34-35, *infra*.

⁸ Para. 36, *infra*.

⁹ Paras. 37-38, *infra*.

¹⁰ Para. 33, *infra*.

¹¹ Para. 40, *infra*.

¹² Para. 39, *infra*.

¹³ Service providers filed Form 477 data for the first time on May 15, 2000, to report connections as of December 31, 1999. Since then, providers have filed mid-year data each September 1 and year-end data each March 1.

¹⁴ *Local Telephone Competition and Broadband Reporting*, Report and Order, WC Docket No. 04-141, 19 FCC Rcd 22340, 22384 (2004) (*2004 Order*).

¹⁵ *2004 Order*, 19 FCC Rcd at 22384-90 (instructions for Part I of Form 477).

¹⁶ *2004 Order*, 19 FCC Rcd at 22393-94 (instructions for Part V of Form 477).

¹⁷ See, e.g., Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2007* (rel. Mar. 19, 2008) (*June 2007 High-Speed Services Report*), available at <http://www.fcc.gov/wcb/iatd/comp.html>.

¹⁸ *Id.* at 2-4.

December 1999, which show 2.5 million broadband connections of which 1.8 million were reported as residential,¹⁹ the June 2007 data demonstrates the explosive growth in broadband availability over the past seven and a half years. From June 2006 through June 2007 alone, the number of reported broadband connections increased by 55%, from 65.3 million to 100.9 million.²⁰ Additionally, the June 2007 data indicate that broadband DSL connections were available to 82% of households to whom incumbent LECs could provide local telephone service, and that broadband cable modem service was available to 96% of the households to whom cable companies could provide cable TV service.²¹

8. In April of 2007, we issued a Notice of Proposed Rulemaking (the “Data Gathering Notice”) in which we questioned whether the information collected by Form 477 provides a sufficiently complete and accurate picture of broadband deployment, particularly with regard to deployment and adoption in rural areas, and the increasing use of wireless broadband and VoIP applications.²² In the Data Gathering Notice, we proposed to modify Form 477 in several respects to improve the quality of the data collected. Information about broadband availability and deployment throughout the nation, in all its forms, is essential to the Commission to assess the success of our broadband policies, and to fulfill our obligations under section 706 of the Telecommunications Act of 1996.²³ Accordingly, in the Data Gathering Notice, we solicited comment about options for collecting broadband deployment information in finer geographic detail.²⁴ The Data Gathering Notice sought comment on ways to improve the quality of data collection concerning wireless broadband Internet access service,²⁵ asked if alternative speed tier information should be collected,²⁶ and asked how best to collect information about subscribership to interconnected VoIP service.²⁷ Generally, the Data Gathering Notice solicited comment about the balance between the benefits of these additional data collections and any burdens such collections may impose.

III. REPORT AND ORDER

9. In this Order, we amend our local telephone competition and broadband data collection (FCC Form 477) to refine and expand the information collected in a variety of ways. Enhancing the granularity in the data we currently collect, and combining that data with new information about subscribership, will

¹⁹ See, e.g., Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of December 31, 2006* (rel. Oct. 31, 2007) at Tbl. 1, Tbl. 3, available at <http://www.fcc.gov/wcb/iatd/comp.html> (containing the December 1999 data).

²⁰ *June 2007 High-Speed Services Report* at Tbl. 1.

²¹ *Id.* at Tbl. 14.

²² *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760, 7765-66, paras. 10-12, 22 (2007) (*Data Gathering Notice*). Also, the United States Government Accountability Office (GAO) has reviewed the strengths and weaknesses of data about broadband availability, including data collected using FCC Form 477, and has concluded that, while broadband deployment is extensive nationwide, it remains very difficult to assess the extent of deployment gaps in rural areas. *Id.* at 7764, para. 6.

²³ 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

²⁴ *Data Gathering Notice*, 22 FCC Rcd at 7774, para. 31.

²⁵ *Id.* at 7766-69, paras. 11-17.

²⁶ *Id.* at 7769-70, paras. 18-21.

²⁷ *Id.* at 7770, para. 22.

greatly improve our own understanding of the state of broadband services in this country and enable us to assist others in fostering broadband deployment.

A. Reporting Broadband Connection Information by Census Tract

10. *Wired, Terrestrial Fixed Wireless, and Satellite Broadband – Subscriber Counts.* As noted above, currently Form 477 requires covered providers to report the number of broadband connections they provide at the state level. In addition, to measure general service availability, Form 477 requires providers to report the 5-digit ZIP Codes in which they have at least one customer.²⁸ In the Data Gathering Notice, we questioned whether these requirements were sufficient to capture the actual extent of broadband deployment, particularly in rural areas where a 5-digit ZIP Code may cover a large and varied region.²⁹ Thus, in the Data Gathering Notice the Commission sought comment on ways to collect more detailed, accurate information that would better capture broadband deployment to assist us in our policy objectives. As discussed below, we agree with those commenters who argue that collecting actual subscribership numbers in Census Tract areas will significantly improve the quality of the information collected, and that the value of these more detailed, informative reports outweighs the burdens of additional costs, if any, imposed on providers by this requirement.

11. In the Data Gathering Notice, we invited comment on requiring facilities-based providers to report customer numbers in geographic units smaller than the state level (e.g., ZIP Codes, as one alternative) and, in order to measure broadband availability, to report the number of homes “passed” by their broadband-enabled infrastructure.³⁰ In response, certain commenters argue that changing the geographic unit of reporting subscribers to 9-digit ZIP Codes would increase the granularity of reported information significantly, enabling policymakers to pinpoint unserved or underserved areas.³¹ Commenters opposing 9-digit ZIP Codes argue that reporting broadband subscribership information at

²⁸ 2004 Order, 19 FCC Rcd at 22393-94 (instructions for Part V).

²⁹ See *Data Gathering Notice*, 22 FCC Rcd at 7773, para. 10.

³⁰ *Id.* at 27-28.

³¹ Numerous filers commented on the need for additional granularity beyond 5-digit ZIP Codes. See, e.g., Letter from Sharon E. Gillett, Commissioner of the Commonwealth of Massachusetts Department of Telecommunications and Cable, and Vendean V. Vafiades, Commissioner of the Maine Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 8, filed June 15, 2007 (MA/ME Joint Comments) (“[B]roadband subscribership based on the current five-digit ZIP Code level, particularly in rural and other hard to serve areas, is a misleading indicator of broadband deployment and availability.”). Some commenters note that, as compared to other potential measures, 9-digit ZIP Code information offers sufficient granularity at a minimum of additional reporting difficulty. See, e.g., Letter from Marc J. Lawrence-Apfelbaum, Time Warner Cable, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 3-4, filed June 15, 2007 (TWC Comments) (“Of the various improvements considered in the NPRM, collecting 9-digit ZIP Code data would deliver the most bang for the buck.”); Letter from Daniel L. Brenner, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6, filed June 15, 2007 (NCTA Comments); Letter from Debbie Goldman, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 3-4, filed June 18, 2007 (CWA Comments); Letter from David Bergmann, National Association of State Utility Consumer Advocates, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 18, filed June 15, 2007 (NASUCA Comments); Letter from Lisa Madigan, Attorney General, Illinois, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed June 15, 2007 (IL AG Comments) (“Identifying the number of customers by 9-digit ZIP Code should be a straight-forward electronic sorting operation that can be done with a simple spread-sheet or data base program.”); Letter from Derek Turner, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 36, filed June 15, 2007 (Consumers Union et al. Comments) (“[K]nowing the market concentration and household penetration at the 9-digit ZIP Code [level] will enable geophysical mapping of where gaps in adoption and competition are.”). Appendix C contains a list of all commenters in this proceeding.

that level would be inappropriate, would result in confidentiality problems, or would simply be too expensive.³² Still other commenters propose the use of geocoded data³³ or of census-based data instead of 9-digit ZIP Codes.³⁴

12. We agree with those commenters who argue that census-based units provide more useful information for our policy purposes,³⁵ and will thus require providers to report numbers of subscribers on the Census Tract level.³⁶ Census-based units are more stable and static than ZIP Codes and thus will

³² Verizon and others argue that 9-digit ZIP Codes are inappropriate because they were designed for postal service usage. *See, e.g.*, Letter from Edward Shakin, Verizon, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 15-16, filed June 15, 2007 (Verizon Comments) (“9-digit ZIP Codes correlate even less meaningfully with geographic and political boundaries because 9-digit ZIP Codes are designed primarily to benefit business mailers....”); Letter from Kevin Rupy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 13, filed June 15, 2007 (US Telecom Comments); Letter from Jouett K. Brenzel, Cincinnati Bell Telephone Company LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed June 15, 2007 (CBT Comments); Reply Letter from Jack Zinman, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 13-14, filed July 16, 2007 (AT&T Reply Comments); Reply Letter from Laura H. Carter, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 1-2, filed July 16, 2007 (Sprint Reply Comments) (emphasizing wireless communications). AT&T and others are concerned about the privacy and confidentiality of reported data at the 9-digit ZIP Code level, fearing that detailed knowledge of a competitor’s subscriber coverage might be problematic. *See, e.g.*, AT&T Reply Comments at 8-11; Letter from Daniel Mitchell, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 12-13, filed June 15, 2007 (NTCA Comments); CBT Comments, 3-4. However, the Consumers Union and others note the current option of requesting confidentiality of the data in Form 477 itself, as well as the Commission’s ongoing interest in and protection of the privacy of reporting companies. *See, e.g.*, Consumers Union et al. Comments at 5; NCTA Comments at 13; IL AG Comments at 5. Finally, some service providers are concerned about the cost and time required to report data at the 9-digit ZIP Code level. *See, e.g.*, Letter from Stephen Pastorkovich, OPASTCO, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 5-7, filed June 15, 2007 (OPASTCO Comments); Verizon Comments at 16-17; NTCA Comments at 4-9; Letter from Matthew M. Polka, American Cable Association, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4-5, filed June 15, 2007 (ACA Comments); AT&T Reply Comments at 13-14; Sprint Reply Comments at 1-2.

³³ The National Association of Telecommunications Officers and Advisors et al. expressed support for using geocoded data instead of 9-digit ZIP Codes because of its greater value, particularly to local communities. Letter from Libby Beaty, National Association of Telecommunications Officers and Advisors, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7, filed June 18, 2007 (NATOA et al. Comments) (“[Geocoded data] gives local governments the best opportunity to help improve deployment in each community.... The costs may be greater than other suggestions offered here, but given the importance of this initiative, cost should not be an overriding factor in selecting a method for measuring deployment.”). Some providers argue that the costs of such an approach would far exceed the costs of a 9-digit ZIP Code system. *See, e.g.*, OPASTCO Comments at 5-7; Verizon Comments at 18-20; Letter from Andrew Krieg, The Wireless Communications Association International, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 8, filed June 15, 2007 (WCA Comments) (noting the difficulties of collecting geocoded data for wireless devices in particular).

³⁴ Reply Letter from Derek Turner, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6, filed July 16, 2007 (Consumers Union et al. Reply Comments); Letter from Natalie Wales, California Public Utilities Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6-7, filed June 18, 2007 (CPUC Comments); IL AG Comments at 2, 6; Letter from Loris Ann Taylor, Native Public Media, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 6, filed June 15, 2007 (NPM Comments at 6); Letter from Christopher J. White, Deputy Public Advocate, New Jersey Division of Rate Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed July 16, 2007 (New Jersey Rate Counsel Reply Comments).

³⁵ *See* Consumers Union et al. Reply Comments at 8.

³⁶ The Census bureau defines a Census Tract as a “small, relatively permanent statistical subdivision of a county delineated by a local committee of census data users for the purpose of presenting data. Census tract boundaries (continued....)

enable to Commission to measure change over time more effectively.³⁷ Additionally, census-based units correspond more consistently to actual locations,³⁸ are less likely to reveal individual identifiable information about consumers,³⁹ and can be correlated with valuable demographic data (including race, income, education, and tribal land status), giving policymakers additional tools with which to analyze broadband uptake.⁴⁰ By contrast, because ZIP Codes are designed for a different purpose than census-based units, namely to deliver efficiently the nation's mail, ZIP Codes are less useful for our purposes.⁴¹ In addition, 9-digit ZIP Codes “do not correspond to any commonly recognized geographic boundaries, such as state or county lines, Congressional districts or service territories.”⁴²

13. Although some commenters urge us to select the smaller Census Block as the geographic unit for reporting subscriber numbers,⁴³ we find that the larger Census Tract is more appropriate for our purposes. Census Tract numbers provide the beneficial census characteristics listed above, and because a Census Tract is larger than a Census Block, requiring providers to report at the Census Tract level rather than the Census Block level will be less burdensome. For this reason, among others, we disagree with commenters that reporting by census-based units is overly burdensome compared to the benefits of this reporting.⁴⁴ The California Public Utilities Commission comments that the California legislature recently enacted a statute requiring statewide video franchise applicants to report subscribers on a census basis.⁴⁵ Commenters argue that this statute has provided California with valuable information from three large

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normally follow visible features, but may follow governmental unit boundaries and other non-visible features in some instances; they always nest within counties. Designed to be relatively homogeneous units with respect to population characteristics, economic status, and living conditions at the time of establishment, census tracts average about 4,000 inhabitants. They may be split by any sub-county geographic entity.” U.S. Census Bureau, http://factfinder.census.gov/home/en/epss/glossary_c.html (viewed March 12, 2008).

³⁷ Consumers Union et al. Reply Comments at 6; CPUC Comments at 7.

³⁸ See, e.g., Letter from Eric Einhorn, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 2, filed March 10, 2008 (Windstream Mar. 10, 2008 *Ex Parte*); Consumers Union et al. Reply Comments at 6.

³⁹ See Windstream Mar. 10, 2008 *Ex Parte*.

⁴⁰ CPUC Comments at 6-9 (mentioning race, income, education); Consumers Union et al. Comments at 6 (“household income, race, urbanicity, age, [and] gender”); NPM Comments at 6-7 (such information would better identify adoption and availability for populations on tribal lands and Native Americans living in other communities); New Jersey Rate Counsel Reply Comments at 4; IL AG Comments at 6 (easier to view demographic variables).

⁴¹ See CPUC Comments at 7 n.13 (quoting the United States Postal Service) (“The Zip Code system was created and designed to provide an efficient postal distribution and delivery network... [Therefore], delivery growth and changing demographics can necessitate adjustments to ZIP Code boundaries in order to achieve United States Postal Service objectives.”) (citation omitted).

⁴² US Telecom Comments at 13.

⁴³ See Consumers Union et al. Reply Comments at 6; CPUC Comments at 6-7; IL AG Comments at 2, 6. The Census Bureau defines a Census Block as a “subdivision of a census tract (or, prior to 2000, a block numbering area), a block is the smallest geographic unit for which the Census Bureau tabulates 100-percent data. Many blocks correspond to individual city blocks bounded by streets, but blocks -- especially in rural areas - may include many square miles and may have some boundaries that are not streets. The Census Bureau established blocks covering the entire nation for the first time in 1990. Previous censuses back to 1940 had blocks established only for part of the nation. Over 8 million blocks are identified for Census 2000.” U.S. Census Bureau, http://factfinder.census.gov/home/en/epss/glossary_c.html (viewed March 13, 2008).

⁴⁴ See, e.g., AT&T Reply Comments at 14 n.38.

⁴⁵ CPUC Comments at 7-8.

providers with minimal burden on the providers.⁴⁶

14. We therefore require facilities-based providers of wired, terrestrial fixed wireless, and satellite broadband connections to report the number of connections that they have in service to households and businesses in each of the Census Tracts in which they operate.⁴⁷ We require these providers to report subscriptions in separate categories based on the speeds of the services.⁴⁸ This information will provide us with a highly detailed and reliable account of broadband subscription and deployment nationwide, enabling us to make more informed policy determinations and to support more effectively the efforts of states and others seeking to promote broadband services. Because of the volume of information being reported, we require providers to supply, in a standardized database format, the number of subscribers in each Census Tract, broken down by technology type and upload and download speed.

15. We disagree with commenters that reporting by census-based units is, in general, overly burdensome compared to the benefits of this reporting.⁴⁹ Nevertheless, we will permit reporting entities to report data in an alternative format under limited circumstances, recognizing that some entities might suffer undue hardship in reporting on a census level. Specifically, upon a showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of the broadband connection in service at each address, in lieu of reporting subscriber counts by Census Tract.⁵⁰

16. *Terrestrial Mobile Wireless Broadband – Subscriber Counts.* In the current Form 477 data collection process, mobile wireless broadband service providers report the number of connections they provide in particular states, and they report the 5-digit ZIP Codes that best represent their broadband service footprint. Because mobile service subscribers may move within and among broadband service areas, we will continue to require them to report only the number of connections they provide in individual states. For the reasons set forth in Paragraphs 12-14 above, we find that the benefits of reporting service footprints at the Census Tract level outweigh the costs of the additional reporting. Therefore, we require mobile wireless broadband service providers to report the Census Tracts that best represent their broadband service footprint for each of the speed tiers in which they offer service.⁵¹ For purposes of Form 477, entities that use unlicensed devices to provide a commercial broadband Internet access service that can be received at any location within a service footprint, e.g., throughout a town, adjoining towns, or portion of a metropolitan area,⁵² will continue to report subscriber information in the

⁴⁶ See Consumers Union et al. Reply Comments at 7 (referencing Verizon, AT&T, and Cox); CPUC Reply Comments at 10 (“It is a relatively simple task for broadband providers to convert their street-level data to... Census Tracts.”).

⁴⁷ This change will take effect with the March 2009 filing by providers of year-end connection data as of December 31, 2008. Additionally, we retain the current requirement to report the percentage of total broadband connections in service in a state that are residential connections. See *Data Gathering Notice*, 22 FCC Rcd at 7773, para. 28.

⁴⁸ See paras. 19-22, *infra*.

⁴⁹ See, e.g., AT&T Reply Comments at 14 n.38.

⁵⁰ See CPUC Reply Comments at 10 (“If a company with granular data does not wish to convert the data it has to census units, however, the FCC should consider allowing that company to provide subscriber and availability information at the smallest geographic unit available, such as at street-level or on a geocoded basis.”).

⁵¹ This requirement replaces the current requirement to report broadband service footprint by 5-digit ZIP Codes.

“terrestrial mobile wireless” category. By contrast, entities that use unlicensed devices to provide broadband Internet access connections to dispersed, fixed end user premises locations are required to report information in the “terrestrial fixed wireless” category of Form 477.

17. *Collecting Additional Information on Broadband Deployment and Adoption.* In the Data Gathering Notice, we sought comment on additional methods, outside the scope of Form 477, that could enable us to further enrich and use the data collected from reporting companies.⁵³ The Data Gathering Notice sought comment on the creation of a voluntary self-reporting system for non-served households.⁵⁴ Comments in the record indicate strong support for creating a self-reporting system, at least as a supplement to other information collection methods.⁵⁵

18. The Commission will design and implement a voluntary system that households may use to report availability and speed of broadband Internet access service at their premises. The voluntary registry will enable households to use the telephone, mail, email, or the Internet to report apparent unavailability of broadband service for their location and information about existing service, such as the type and actual speed of Internet access service they use. The information collected through the voluntary registry will be shared with public-private partnerships and with the Telecommunications Program of the United States Department of Agriculture (USDA) Rural Development Agency.⁵⁶ In the accompanying Further Notice we seek comment on ways in which to share information gathered while at the same time preserving confidentiality.⁵⁷ Furthermore, in order to obtain data on broadband services at an even more granular level than the information collected by the changes we adopt in this Order, we will recommend to the Census Bureau that the question in Appendix B be added to the American Community Survey and the Puerto Rico Community Survey.⁵⁸

B. New Broadband Connection Speed Categories

19. Form 477 currently gathers information within “speed tiers” in which providers categorize the maximum speeds of connections offered to customers.⁵⁹ The lowest of these tiers includes connections with information transfer rates that exceed 200 kbps in both directions and are less than 2.5
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⁵² An example would be a wireless Internet service provider (“WISP”) that has installed wireless access points throughout a town or adjacent towns, or in a portion of a city or metropolitan area. Such service configurations are sometimes called “portable” or “nomadic,” as subscribers are expected to use the service at various locations within the service footprint.

⁵³ *Data Gathering Notice*, 22 FCC Rcd at 7772-73, para. 26.

⁵⁴ *Data Gathering Notice*, 22 FCC Rcd at 7775-76, para. 34.

⁵⁵ *See, e.g.*, NPM Comments at 8 (“Although such self-reporting will not be a substitute for changes to the Commission’s current data gathering efforts, it could serve as a useful supplement to those efforts, and might provide the Commission with better information about why broadband is not being adopted in areas where it is available.”); NASUCA Comments at 20-21. *But see* Letter from Jeffrey Lanning, Embarq, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 10, filed June 15, 2007 (Embarq Comments) (raising concerns about reliability of the information).

⁵⁶ *See generally* <http://www.usda.gov/rus/telecom/index.htm>. We intend to share granular information only for purposes relating directly to Commission and intergovernmental programs and planning. We do not intend to make the raw information gathered publicly available.

⁵⁷ *See* para. 39, *infra*.

⁵⁸ The American Community Survey collects a variety of information on communities and is designed to fill in the gaps between each official 10-year Census. *See* <http://www.census.gov/acs/www/>.

⁵⁹ *2004 Order*, 19 FCC Rcd at 22388-89 (instructions for Part I.A of Form 477).

mbps in the faster direction. The next tier includes connections with information transfer rates that exceed 200 kbps in both directions and are greater than or equal to 2.5 mbps and less than 10.0 mbps in the faster direction.⁶⁰ In the Data Gathering Notice, we sought comment on modifying these tiers, offering as one possible approach the creation of a new, separate tier that includes those connections with information transfer rates greater than 200 kbps and less than 1.0 mbps.⁶¹ As many commenters noted, the range of information transfer capacities included in the current lowest tier of 200 kbps to 2.5 mbps captures a wide variety of services, ranging from services capable of transmitting real time video to simple always-on connections not suitable for more than basic email or web browsing activities.⁶² We find that requiring providers to report data in more detailed speed tiers will better identify services that support advanced applications, creating distinctions that reflect different capacities for transmitting high quality video and similar high bandwidth communications.⁶³ We also find that, as technologies and services evolve, upload speeds are an increasingly significant aspect of broadband services, and increased granularity in reporting both download and upload speed data will assist us in understanding the broadband services market.⁶⁴

20. Accordingly, in order to gather more detailed and therefore useful information about subscription to broadband services, we revise Form 477 to establish an increased number of transfer speed categories, applicable to both download and upload service speeds. Specifically, the reporting tiers applicable to the reporting of both download and upload transfer rates under the new Form 477 collection are: (1) greater than 200 kbps but less than 768 kbps; (2) equal to or greater than 768 kbps but less than 1.5 mbps; (3) equal to or greater than 1.5 mbps but less than 3.0 mbps; (4) equal to or greater than 3.0 mbps but less than 6.0 mbps, (5) equal to or greater than 6.0 mbps but less than 10.0 mbps; (6) equal to or greater than 10.0 mbps but less than 25.0 mbps; (7) equal to or greater than 25.0 mbps but less than 100.0 mbps; and (8) equal to or greater than 100 mbps. As discussed in our *Fifth Report*, pursuant to section 706 of the Telecommunications Act of 1996, we find it appropriate to continue to evaluate broadband deployment by monitoring the migration of customers and services to higher speed tiers by continuing to collect information beginning at the 200 kbps threshold that is appropriately considered “first generation.”⁶⁵ Additionally, we will retain the requirement that providers report connections with

⁶⁰ *Id.*

⁶¹ *Data Gathering Notice*, 22 FCC Rcd at 7769, paras. 18-19 (seeking comment broadly on “whether the Commission should develop a higher or more varied measurement of broadband speed”).

⁶² *See, e.g.*, Letter from Scott Blake Harris, Counsel to Vonage Holdings Corp., et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 3-4, filed June 15, 2007 (Vonage Comments) (“For instance, depending on its actual capacity, a broadband connection currently reported in the 200 kbps - 2.5 mbps tier could either barely support standard web-browsing or it could enable real-time two-way video conferencing.”).

⁶³ *See, e.g.*, Consumers Union et al. Reply Comments at 12 (noting that 1.0-2.0 mbps is a minimum requirement for transmitting real time VHS-quality video using MPEG-2 encoding, and that at least 384 kbps is needed for low quality video conferencing using MPEG-4 encoding).

⁶⁴ *See, e.g.*, Consumers Union et al. Comments at 21-27 (arguing that the current download speed tiers do not reflect the market for broadband services, and that measuring upload speed of services would allow them to be evaluated on their potential for originating high-quality video).

⁶⁵ As many commenters noted, this benchmark includes services that remain valuable to consumers because of their “always-on” nature and their capacity for more basic Internet services. *See, e.g.*, US Telecom Comments at 14-15 (“For many consumers and businesses, the 200 Kbps capability is more than sufficient to meet their current needs, which often consists of basic e-mail use, access to general information (e.g. government websites and news) and the transmission of standard digital media such as pictures and documents.”); AT&T Comments at 7-9; Verizon Comments at 22; NPM Comments at 5; TWC Comments at 6; Letter from David J. Redl, CTIA – The Wireless Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 14, filed June 15, 2007 (CTIA (continued....))

download transfer rates above 200 kbps and upload speeds of less than or equal to 200 kbps, because upload services in this category continue to be a common offering in the broadband services market. Filers will report the number of subscribers for each type of technology of service they offer, in each combination of download and upload speed categories, within each Census Tract in which the providers have subscribers.⁶⁶ Figure 1 provides an illustration of the data that Form 477 filers will be required to provide for each Census Tract and technology type.⁶⁷

Number of Broadband Subscribers

Upload Speed	Download Speed							
	Greater than 200 kbps and less than 768 kbps	Greater than or equal to 768 kbps and less than 15 mbps	Greater than or equal to 15 mbps and less than 3 mbps	Greater than or equal to 3 mbps and less than 6 mbps	Greater than or equal to 6 mbps and less than 10 mbps	Greater than or equal to 10 mbps and less than 25 mbps	Greater than or equal to 25 mbps and less than 100 mbps	Greater than or equal to 100 mbps
Less than or equal to 200 kbps								
Greater than 200 kbps and less than 768 kbps								
Greater than or equal to 768 kbps and less than 15 mbps								
Greater than or equal to 15 mbps and less than 3 mbps								
Greater than or equal to 3 mbps and less than 6 mbps								
Greater than or equal to 6 mbps and less than 10 mbps								
Greater than or equal to 10 mbps and less than 25 mbps								
Greater than or equal to 25 mbps and less than 100 mbps								
Greater than or equal to 100 mbps								

Figure 1: Data elements of reporting for one provider, in one Census Tract, for one type of technology

21. The action we take in this Order will help ensure that the Commission gathers the data it requires in order to carry out its obligations under section 706 of the Act.⁶⁸ While these changes may increase reporting requirements for some service providers, and require new methods for comparison of

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 Comments); CWA Comments at 6-7; Consumers Union et al. Comments at 34-35; ITIF Comments at 2-3; NASUCA Comments at 11-12. Additionally, collecting data at these speeds allows for greater consistency with past data collection, and thus greater tracking of broadband deployment over time. *See, e.g.*, AT&T Comments at 10; TWC Comments at 6.

⁶⁶ We will use the terms “first generation data” to refer to those services with information transfer rates greater than 200 kbps but less than 768 kbps in the faster direction, and “basic broadband tier 1” to refer to services equal to or greater than 768 kbps but less than 1.5 mbps in the faster direction. Subsequent tiers will be labeled “broadband tier 2” through “broadband tier 7”. These terms are evolving definitions that could change over time based on advances in technology.

⁶⁷ This figure is only an illustration of the types of data that will be collected and is not an example of an actual filing format or form to be used for filing. Under the new requirements, filers will submit data in a database format, the details of which will be specified in a subsequent Commission release. As with all other information collections, before this reporting requirement can take effect, approval from the Office of Management and Budget must be received.

⁶⁸ 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

new data to old data,⁶⁹ we agree with commenters who note that such changes will improve the Commission's understanding of the market for broadband services.⁷⁰ Through these adjustments, we continue and extend the Commission's efforts to collect data to assess broadband deployment based on tiered speeds.⁷¹ It is our intention to revisit these speed thresholds every two years to assess whether advances in technology warrant further refinements.

22. In the Data Gathering Notice, we requested comment on two additional changes to Form 477 data collection concerning broadband speed – the creation of speed tiers that adjust automatically with changes in technology,⁷² and a requirement for service providers to report actual measured speed, rather than the maximum possible speed, for each broadband connection.⁷³ We choose not to adopt a method to adjust speed tiers automatically at this time. While adjusting speed tiers may be necessary in time as technology changes, and while creating a mechanism to make these adjustments automatically might streamline the regulatory process,⁷⁴ it is likely impracticable to construct a mechanism for updating speed tiers that can automatically adjust to all possible future technological changes.⁷⁵ We agree with commenters who suggest that considerable potential value exists in knowing actual broadband connection speeds that consumers experience,⁷⁶ but we note that the record indicates that collecting such information directly from providers may impose significant burdens,⁷⁷ and that other methods for gathering this information may exist.⁷⁸ As noted above, we intend to establish a voluntary registry that, among other things, will allow broadband service customers to report actual speeds of service received, as a tool to

⁶⁹ See, e.g., Letter from Laura Holloway Carter, Sprint Nextel Corporation to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7, filed June 15, 2007 (Sprint Comments).

⁷⁰ See, e.g., Verizon Comments at 23; Vonage Comments at 3-4; WCA Comments at 4; NATOA et al. Comments at 10; CWA Comments at 5; Letter from Robert Atkinson, Information Technology and Innovation Foundation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 2, filed May 25, 2007 (ITIF Comments); NASUCA Comments at 11; Letter from Emily Sheketoff, American Library Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 2, filed June 15, 2007 (ALA Comments). *But see* AT&T Comments at 7.

⁷¹ See, e.g., 2004 Order, 19 FCC Rcd 22340.

⁷² Data Gathering Notice, 22 FCC Rcd at 7769-70, para. 20.

⁷³ *Id.* at 7770, para. 21.

⁷⁴ See, e.g., Vonage Comments at 4, NATOA et al. Comments at 10-11, ITIF Comments at 4-5.

⁷⁵ See, e.g., AT&T Comments at 10 (“any attempt to predict the future with some sort of “automatic” adjustment mechanism would virtually guarantee a disconnect between the reporting thresholds and actual marketplace conditions”); WCA Comments at 4-5. Commenters observe that such a change would also make tracking to past data more difficult. See, e.g., TWC Comments at 6; NCTA Comments at 12-13. The factor-of-10 proposal of Massachusetts et al., MA/ME Joint Comments at 12, for example, would require a complete adjustment to the current tiers, and would render tracking to past data more difficult. Commenters indicate that an auto-adjusting speed tier system is “premature” at this time. See, e.g., NASUCA Comments at 12-13.

⁷⁶ See, e.g., Reply Letter from Debbie Goldman, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7-8, filed July 13, 2007 (CWA Reply Comments).

⁷⁷ See, e.g., AT&T Comments at 11 (“Point in time measurements of individual users’ broadband experiences would not produce meaningful results because the ‘actual’ information transfer speed that a particular customer experiences at any time is a function of myriad factors, many of which are beyond the broadband service provider’s control and mask the true capabilities of the service...”); Verizon Comments at 21-22; OPASTCO Comments at 7-8; TWC Comments at 7.

⁷⁸ See, e.g., ITIF Comments at 5-6.

assist us in monitoring the deployment of broadband services.⁷⁹ We also seek comment in the Further Notice accompanying this Order on additional ways to capture information on actual speeds of service experienced by consumers.⁸⁰

C. Other Reporting Requirements for Mobile Wireless Broadband Providers

23. *Distinguishing Subscribers by Service Usage.* In the Data Gathering Notice, we noted that providers of mobile wireless broadband service are currently required to “report the number of end users whose mobile device, such as wireless modem laptop cards, smartphones, or handsets, are capable of sending or receiving data at speeds in excess of 200 kbps....”⁸¹ This information is valuable in that it represents, in the broadest sense, those mobile wireless users with the capacity to access broadband services.⁸² We also sought comment on requiring mobile wireless broadband providers to report the number of subscriptions which include a data plan, separate from the information about broadband capable devices that we currently collect.⁸³ Commenters note that tracking those users with a month-to-month or longer plan for broadband data transfer produces more accurate information about mobile broadband usage than simply tracking users who are capable of such use.⁸⁴ We agree with these commenters and conclude that the benefits of gathering separate information about mobile broadband subscriptions that contain a data plan, including the increased ability of the Commission to understand the level of mobile wireless usage, outweigh any additional reporting costs. We therefore revise Form 477 to add a second reporting category in which mobile service providers will report the number of subscribers whose device and subscription permit them to access the lawful Internet content of their choice.⁸⁵ When counting such subscribers, we direct providers to exclude subscribers whose choice of content is restricted to only customized-for-mobile content,⁸⁶ and to exclude subscribers whose subscription does not include,

⁷⁹ See para. 18, *supra*.

⁸⁰ See para. 36, *infra*.

⁸¹ *Data Gathering Notice*, 22 FCC Rcd at 7766, para. 12 (quoting *2004 Data Gathering Order*, 19 FCC Rcd at 22387, instructions for Line A.I-8).

⁸² See, e.g., AT&T Comments at 20-21 (“This capability gives customers the flexibility to use such services “on-demand” without the expense of ongoing monthly payments and thus provides an important mechanism for encouraging greater broadband adoption in the U.S.”). *But see* Consumers Union et al. Comments at 13-17 (arguing that because wireless broadband services are not equivalent to wireline, in particular by not complying with open access principles, they should not be counted as broadband technologies in FCC statistical reports).

⁸³ *Data Gathering Notice*, 22 FCC Rcd at 7767, para. 14.

⁸⁴ See, e.g., NPM Comments at 4 (noting that “absent such a distinction, the Commission's data may over-report the extent of wireless broadband adoption, thereby hindering the efforts of the Commission and other policy makers to make well-informed legal, policy, and regulatory decisions.”); NASUCA Comments at 9 (“The Commission’s proposals are entirely appropriate given that it is otherwise difficult to determine whether mobile wireless broadband subscription numbers are inflated because of onetime downloads; a customer purchase of broadband-capable handset, but not a broadband service plan; or other reasons.”); Sprint Comments at 3 (noting the feasibility of reporting such information); NJ Rate Counsel Comments at 6.

⁸⁵ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, FCC 05-151, 20 F.C.C.R. 14986 (2005). In particular, a device which can access only a limited set of websites optimized for wireless device usage, such as a device which can only download ringtones and games or send messages, does not permit access to the full Internet.

⁸⁶ Customized-for-mobile content includes, for example, text and multimedia messaging, as well as the capacity to download ringtones and games. It also includes content which encapsulates and packages a limited set of websites optimized solely for wireless device usage. *Data Gathering Notice*, 22 FCC Rcd at 7766-67, paras. 13-14.

either in a bundle or as a feature added to a voice subscription, a data plan providing the ability to transfer, on a monthly basis, either a specified or an unlimited amount of data to and from Internet sites of the subscriber's choice.

24. *Residential Subscribers*. We modify the Form 477 instructions for counting certain mobile wireless broadband subscribers as residential subscribers. In the Data Gathering Notice, we mentioned that only approximately 11 percent of mobile wireless broadband subscribers are reported as residential subscribers in the aggregated Form 477 data, and that this information could understate residential subscribership.⁸⁷ Commenters note that many individuals who use a mobile device for business purposes also use it for personal purposes, and that employers variously underwrite employees' business-related use of mobile wireless services.⁸⁸ Commenters also note that mobile wireless providers may differ in their marketing strategies and how they distinguish market segments.⁸⁹ Nevertheless, we wish to obtain greater Form 477 reporting consistency and accuracy.⁹⁰ Therefore, we direct mobile wireless broadband providers to report as residential subscriptions those subscriptions that are not billed to a corporate account, to a non-corporate business customer account, or to a government or institutional account.⁹¹

D. Reporting Requirements for Interconnected VoIP Service Providers

25. In the Data Gathering Notice, we noted that only some providers of interconnected VoIP services were required to report information on Form 477.⁹² In order to gather complete information on interconnected VoIP service adoption, the Data Gathering Notice sought comment on how to collect information on the number of interconnected VoIP subscribers in the least burdensome manner.⁹³ Specifically, the Data Gathering Notice sought comment on whether to require providers of interconnected VoIP service to report information on the number of end-user subscribers in individual states, on the percentage of the subscribers who are residential, and on whether or not the service is provided over a broadband connection provided by the filer or by the filer's affiliate.⁹⁴

26. Interconnected VoIP service subscribers represent an important and rapidly growing part of

⁸⁷ *Data Gathering Notice*, 22 FCC Rcd at 7768, para. 16.

⁸⁸ *See, e.g.*, Verizon Comments at 13-14 (“[T]his reporting rule would produce misleading estimates of residential use...broadband providers have no way to accurately determine if the subscriber is a business or a residential user.”); NASUCA Comments at 10-11 (“Many of those consumers have wireless broadband for work purposes, but also rely on the service for other purposes.”).

⁸⁹ *See, e.g.*, Sprint Comments at 4 (requesting that the Commission “provide carriers flexibility in how they report this information because the residential vs. business reporting methodology varies from carrier to carrier”).

⁹⁰ The benefits of this change are clear, and outweigh the costs. *See, e.g.*, AT&T Comments at 24 (noting the feasibility and value of identifying customers who receive a corporate or government plan yet use the devices for personal purposes, on the basis of not being billed to the corporation or government entity).

⁹¹ For purposes of Form 477, subscriptions billed to a federal government department or agency, for example, will not be “residential” subscriptions, while subscriptions to a service plan offered to all federal government employees will be considered to be residential subscriptions.

⁹² *Data Gathering Notice*, 22 FCC Rcd at 7770, para. 22. Interconnected VoIP service is a service that enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires Internet-protocol compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. *See* 47 C.F.R. § 9.3.

⁹³ *Data Gathering Notice*, 22 FCC Rcd at 7770, para. 22.

⁹⁴ *Id.*

the U.S. voice service market, and interconnected VoIP services are becoming increasingly competitive with other forms of local telephone service. Under the Commission's current reporting rules, end-user subscriptions to interconnected VoIP services are substantially underreported, which distorts the Commission's view of the extent of interconnected VoIP service deployment and uptake, and potentially distorts the Commission's picture of the U.S. voice service market. Our predictive judgment is that, if we did nothing to update our reporting rules, these distortions would continue to grow.

27. We conclude that we have the authority under Title I of the Act to impose reporting obligations on providers of interconnected VoIP service, and are justified in exercising this authority.⁹⁵ Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated⁹⁶ and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities."⁹⁷ Both predicates for ancillary jurisdiction are satisfied here.

28. First, as we concluded in previous orders, interconnected VoIP services fall within the subject matter jurisdiction granted to the Commission in the Act.⁹⁸ Second, our analysis requires us to evaluate whether imposing reporting obligations is reasonably ancillary to the effective performance of the Commission's various responsibilities. Based on the record in this matter, we find that requiring interconnected VoIP service providers to report the number of subscribers they serve (both end user and for resale), the percentage of these who are residential, and whether the interconnected VoIP service is provided over a broadband connection provided by the filer or by the filer's affiliate is reasonably ancillary to the effective performance of the Commission's various responsibilities under the Act.⁹⁹ The

⁹⁵ Our decision today does not constitute a finding that interconnected VoIP services are either "telecommunications services" or "information services." See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4893-94, paras. 43-44 (2004) (seeking comment on the proper classification of particular IP-enabled services as "telecommunications services" or "information services" under the definitions of the Act).

⁹⁶ See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that "the critical question in this case is whether the Commission has reasonably determined that its origination rule will 'further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services.'" *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) (*Midwest Video II*).

⁹⁷ *Southwestern Cable*, 392 U.S. at 178.

⁹⁸ See, e.g., *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47; *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 ("[I]nterconnected VoIP services are covered by the statutory definitions of 'wire communication' and/or 'radio communication' because they involve 'transmission of [voice] by aid of wire, cable, or other like connection . . .' and/or 'transmission by radio . . .' of voice. Therefore, these services come within the scope of the Commission's subject matter jurisdiction granted in section 2(a) of the Act.").

⁹⁹ See 47 U.S.C. §§ 157 nt, 211, 218, 219, 220.

Commission has a responsibility under section 706 of the Telecommunications Act of 1996 to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability.¹⁰⁰ Furthermore, the Act specifically authorizes the Commission to require annual reports from all carriers subject to the Act,¹⁰¹ as well as to require the production of other information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.¹⁰²

29. The Commission's primary goal underlying the reporting requirements is the identification of unserved and underserved areas with respect to advanced telecommunications capability. Our ability to perform the Commission's functions related to this objective depends upon our having adequate information about deployment and uptake of advanced telecommunications capability. As explained above, we do not believe it is possible to obtain an accurate view of the U.S. voice service market without gathering data about interconnected VoIP service subscribers. Thus, the Commission's continued ability to exercise its responsibilities – such as identifying unserved and underserved markets – depends in part on requiring interconnected VoIP providers to report the number of end-user and resale subscribers they serve, the percentage of these who are residential, and whether the interconnected VoIP service is used over a broadband connection provided by the filer or by the filer's affiliate. Thus, we conclude that imposing these reporting obligations is reasonably ancillary to the effective performance of our responsibilities.

30. Commenters noted that interconnected VoIP services are becoming increasingly competitive with local telephone service, and that it is appropriate to collect information on subscriptions, including the number of connections and the percentage of those connections that are residential, in order to determine the extent of competition posed by the services.¹⁰³ Verizon filed the lone objection to recording this information.¹⁰⁴ We conclude that gathering the number of end-user and resale subscribers to interconnected VoIP service and the percentage of those subscribers who are residential would provide valuable information that would enable the Commission to track deployment and adoption of interconnected VoIP service across the nation. Accordingly, we modify Form 477 to require providers of interconnected VoIP service to report information about the number of end-user and resale subscribers they have in individual states, and the percentage of the subscribers who purchase the provider's residential grade service plan.¹⁰⁵ Additionally, to collect useful information as set forth in the Data

¹⁰⁰ 47 U.S.C. § 157 nt.

¹⁰¹ 47 U.S.C. § 219 (authorizing the Commission to require annual and other reports); *see also* 47 U.S.C. § 211 (authorizing the Commission to require the filing of contracts, agreements, and arrangements related to any traffic affected by the provisions of the Act); 47 U.S.C. § 220 (authorizing the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the Act, including regarding the movement of traffic and the receipt of moneys, and to obtain access to such records).

¹⁰² 47 U.S.C. § 218 (directing the Commission to “keep itself informed . . . as to technical developments and improvements in wire and radio communication and radio transmission of energy” and to obtain from “carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created”).

¹⁰³ *See, e.g.*, AT&T Comments at 25; NCTA Comments at 15; IL AG Comments at 8.

¹⁰⁴ Verizon Comments at 26-27.

¹⁰⁵ Entities that provide interconnected VoIP service to end users in conjunction with a broadband connection will report information about the interconnected VoIP subscription separately from other providers of interconnected VoIP service to end users. Entities that provide interconnected VoIP service for resale will report this information separately as well. Because some interconnected VoIP service subscribers may be able to use the service at different locations where a broadband connection is available, if the interconnected VoIP provider also provides a broadband connection to the end user, then the interconnected VoIP subscriber will be reported in the same state as the (continued....)

Gathering Notice, we modify Form 477 to require providers of interconnected VoIP service to report a list of 5-digit ZIP Codes within each state in which they have at least one subscriber.¹⁰⁶ This requirement achieves regulatory parity across technologies that offer voice-grade equivalent lines or channels.¹⁰⁷

31. Furthermore, as mentioned above, the Data Gathering Notice sought comment on whether to require providers of end-user interconnected VoIP service to report whether the service is provided over a broadband connection provided by the filer or the filer's affiliate.¹⁰⁸ Commenters noted that providing this information can enable the Commission to detect any competitive concerns resulting from the bundling of broadband and interconnected VoIP services.¹⁰⁹ Because of the nomadic nature of certain VoIP services, AT&T contends that collection of this information would be impossible, or at least meaningless, as users of the interconnected VoIP service are able to use it over other connections as well as the associated broadband connection.¹¹⁰ We conclude that gathering information regarding the number of subscribers who receive broadband service in conjunction with interconnected VoIP service, and the share of interconnected VoIP service subscribers who can use the service over any broadband connection, would provide valuable information on the deployment of interconnected VoIP service.¹¹¹ We therefore require interconnected VoIP providers to report information about the type(s) of broadband connections, if any, they or their affiliates provide in conjunction with interconnected VoIP service, and to report whether the interconnected VoIP service must be used over a single predetermined broadband connection or can be used over any broadband connection.

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broadband connection, and if not, the interconnected VoIP subscriber will be reported in the state of the subscriber's "Registered Location" as of the data-collection date (*i.e.*, June 30 or December 31). The end user's "Registered Location" is the most recent information obtained by an interconnected VoIP service provider that identifies the physical location of the end user. *See* 47 C.F.R. § 9.3.

¹⁰⁶ Interconnected VoIP service providers who do not also provide a broadband connection to the subscriber will report the ZIP Code of the subscriber's Registered Location. While this is not within the specific information listed in the Data Gathering Notice, it is nevertheless within the general request "to collect useful information about the number of interconnected VoIP service subscribers," as this information is necessary to achieve neutrality across technologies, and to identify in detail those unserved and underserved areas which require special attention. Form 477 connects the ZIP Code listing requirement to the basic reporting of the number of subscribers per state, so that providers who report the latter must also report the former. *See 2004 Order*, 19 FCC Rcd at 22380 ("If in Part II you report voice-grade equivalent lines or voice-grade equivalent wireless channels for service provided to end users, you must provide in Part V a list containing the 5-digit ZIP Codes of the locations to which you provide those lines or channels.").

¹⁰⁷ In this Order we make a number of changes to broadband service offerings which modify the information collected in Form 477. We do not at this time adopt similar changes for local exchange carriers and interconnected VoIP service providers, who will continue to list those 5-digit ZIP Codes in which they have at least one end-user subscriber.

¹⁰⁸ *See Data Gathering Notice*, 22 FCC Rcd at 7770, para. 22.

¹⁰⁹ *See* Vonage Comments at 5; IL AG Comments at 9; Reply Letter from David Bergmann, National Association of State Utility Consumer Advocates, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 17, filed July 16, 2007 (NASUCA Reply Comments).

¹¹⁰ AT&T Comments at 25-26.

¹¹¹ In response to AT&T's concern, we do not at this time ask providers to track or report when the nomadic users of interconnected VoIP service actually are using the service over the associated broadband connection. We merely ask filers that provide both services to the same consumer, and filers whose service can or cannot be used nomadically, to report this information.

E. Other Matters

32. *Alternate Reporting Methodology in Cases of Significant Hardship.* The changes to our Form 477 information collection will significantly increase the Commission's ability to carry out its statutory duties under section 706 of the Communications act to monitor broadband deployment. The new information gathered by Form 477 will enable the Commission, the industry, and other parties to realize many benefits, including forming a more detailed understanding of the scope of broadband adoption, connecting data on broadband services to demographic data collected by the Census Bureau, and pinpointing areas that are currently unserved or underserved. Some commenters suggest that small and medium sized carriers should be exempt from the modified reporting requirements that we adopt in this Order.¹¹² We disagree. Creating a blanket exemption for small and medium sized carriers would undercut the benefits of our revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. However, as mentioned above,¹¹³ in order to ease the process of this transition in reporting methodology, upon a showing of significant hardship, reporting entities may report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address, in lieu of producing and reporting subscribership counts by Census Tract.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Reporting Number of Lines and Channels

33. Currently, local exchange carriers that file Form 477 are required to report the total number of voice-grade equivalent lines and wireless channels provided to end users.¹¹⁴ This information is provided on a state-by-state basis.¹¹⁵ In the Order above, we extended this obligation to providers of interconnected VoIP service.¹¹⁶ In this Further Notice we seek comment on whether to require local exchange carriers and interconnected VoIP service providers to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level. This increased granularity of data would enable the Commission to better assess adoption of particular technologies and competition using particular technologies in localized areas. We seek comment on the benefits and burdens associated with this additional reporting requirement.

B. Broadband Availability Mapping

34. In the Data Gathering Notice, we sought comment on methods to better use the data collected by Form 477.¹¹⁷ We acknowledged the success of the ConnectKentucky initiative and its interactive mapping program.¹¹⁸ We note that the ConnectKentucky program, along with other efforts at the state level, has facilitated identification of areas without broadband service, and that this identification has

¹¹² See ACA Comments at 4-5; COMPTTEL Comments at 1-4; Reply Letter from Karlen Reed, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 7, filed July 16, 2007 (NTCA Reply Comments).

¹¹³ See para. 13, *supra*.

¹¹⁴ 2004 Order, 19 FCC Rcd at 22380.

¹¹⁵ The form requires filers to fill out only the total number of lines and channels, and one form is filed per state. 2004 Order, 19 FCC Rcd at 22384-90.

¹¹⁶ See paras. 25-31, *supra*.

¹¹⁷ Data Gathering Notice, 22 FCC Rcd at 7771-74, paras. 25-29.

¹¹⁸ Data Gathering Notice, 22 FCC Rcd at 7772-73, para. 26

resulted in public and private resources being focused to provide service to unserved areas.¹¹⁹ In order to provide an information resource that will facilitate similar focus nationwide, we seek comment on the adoption of a national broadband mapping program with the objective of creating a highly detailed map of broadband availability nationwide. We seek comment on ways such a program can provide useful information to other broadband initiatives undertaken by federal and state agencies and public-private partnerships, such as ConnectKentucky.¹²⁰ We seek comment on whether and to what extent we might work with the Department of Agriculture's Rural Utilities Service in developing and using this mapping program, so as to combine the expertise of the Commission and its staff with that of the RUS in supporting rural infrastructure deployment.

35. We tentatively conclude that the Commission should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available. We seek comment on this conclusion, and on what standardized formats could be used to collect the information. We seek comment on whether and how a nationwide broadband mapping program can incorporate the data collected on Form 477, including information on broadband service subscriptions by Census Tract and by speed tier.¹²¹ We also seek comment on whether there are other sources from which the Commission should collect data to improve the output of the broadband service availability mapping program. We seek comment on how to maintain the confidentiality of broadband service information while still providing a rich resource for use by other federal agencies, states, localities, and public-private partnerships in focusing resources on expanding broadband availability in a manner similar to the focusing of resources enabled by the Connect Kentucky project.¹²² We will apply an expedited comment cycle on this issue, and we intend to issue a responsive Order within 4 months.

C. Delivered Speed Information Gathering

36. As discussed in the Order above, in the Data Gathering Notice we sought comment on whether to require reporting of actual broadband connection speeds experienced by customers rather than the theoretical maximum that a given network can support or the particular service configuration allows.¹²³ The record indicates that factors beyond the control of service providers may compromise the ability of service providers to report actual speeds experienced by consumers.¹²⁴ Also, comments in the

¹¹⁹ Letter from Laura M. Taylor, Vice President of Research, Connected Nation, to Marlene H. Dortch, Secretary, FCC, WC Docket 07-38, at 1, filed October 24, 2007 (ConnectKentucky Comments). According to Connected Nation, the ConnectKentucky initiative gathers voluntary data from providers of broadband services in a variety of formats, verifies this data through the assistance of community working groups within each of Kentucky's 120 counties, and plots the information on a single multi-layer interactive map covering the entire state. *Id.*

¹²⁰ Comments in the record indicate substantial support for public-private partnerships. *See, e.g.* Letter from Jack Zinman, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 16, filed June 15, 2007 (AT&T Comments) (“[T]he Commission should, where appropriate, coordinate with the private industry partnerships, such as ConnectKentucky, that have conducted detailed analyses of broadband availability in particular geographic areas.”); Verizon Comments at 4-6 (“[T]he Commission should encourage current efforts by Congress to establish grant programs or other types of funding to establish these types of public-private initiatives.”).

¹²¹ *See* paras. 14-16, *infra*.

¹²² ConnectKentucky Comments at 1-2. ConnectKentucky collects its information in a variety of ways; the granular information we will collect will enable states to have access to a “comprehensive national data set which is consistent across states.” *See id.* at 2.

¹²³ *See* para. 22, *supra*; *Data Gathering Notice*, 22 FCC Rcd at 7770, para. 21.

¹²⁴ *See* para. 22, *supra*.

record point to the existence of other methods of collecting this information.¹²⁵ In this Further Notice, we seek comment on how we might require service providers to report this information, and any alternative means, in addition to or other than requiring such service provider reporting, for effectively capturing meaningful information about actual speeds of Internet access services experienced by consumers.

D. Broadband Price Information

37. In the Data Gathering Notice, we sought comment on whether and how we could collect price information for broadband services.¹²⁶ Among other questions, we asked how to compare price information in introductory offers and bundled services.¹²⁷ In the record in this proceeding, commenters note that such price information is helpful in understanding broadband uptake, particularly when viewed across regions and in comparison to demographic information.¹²⁸ Comments from state entities also emphasized the value of gathering price information, particularly for low-cost broadband services, to assist the state entities with ensuring availability of broadband service and monitoring competition.¹²⁹ Commenters note, however, that price information is complex due to promotions, bundling discounts, contract terms, multi-part tariffs, and other contextual information, and that price fluctuations can be frequent and have the potential to render data gathering meaningless or even misleading.¹³⁰ Some commenters suggest collecting pricing information on a price-per-bit basis to simplify reporting and comparison.¹³¹ Others question the need for or utility of collecting this information on Form 477 at all

¹²⁵ *Id.*

¹²⁶ *Data Gathering Notice*, 22 FCC Rcd at 7779, paras. 45-47.

¹²⁷ *Id.*

¹²⁸ *See, e.g.*, MA/ME Joint Comments at 13 (“In order for the FCC and state commissions to make informed policy decisions regarding telecommunications and broadband, factors affecting consumer demand and uptake, such as demographic information, adoption rates, price and non-price information, and the relationship between these factors, must be collected and analyzed.”); Consumers Union et al. Comments at 36-37 (“Numerous surveys indicate that price and perceived value are the key reasons why consumers who could purchase broadband choose to not do so.”).

¹²⁹ *See* MA/ME Joint Comments at 13 (“In particular, price information is essential for state commissions to ensure affordability.”); IL AG Comments at 9-11 (noting that gathering price information would enable the Commission to “track the competitive options customers have for broadband service as well as whether customers are being discouraged through pricing policies to purchase more than one service from their broadband provider.”); Letter from John Ridgway, Iowa Utilities Board, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 4, filed June 15, 2007 (IUB Comments) (“Although it may be challenging to analyze on a national basis, the Commission may find the data helpful when it performs more granular analysis.”).

¹³⁰ *See, e.g.*, Verizon Comments at 23-26 (“[T]he specific prices that consumers pay vary based on factors such as promotions, bundled discounts, term commitments, and the unique circumstances of prospective customers.”); TWC Comments at 9 (“Prices are constantly in flux in the dynamic broadband marketplace, rendering annual reporting uninformative, and potentially even misleading because customers have numerous pricing options, including temporary promotional rates and bundling discounts.”); NCTA Comments at 9; Sprint Comments at 10-11.

¹³¹ *See* NATOA et al. Comments at 11-12 (“Price-per-bit provides a fair assessment of the value being afforded the consumer and, when calculated using optimum speed, allows for level comparisons among providers.”); Letter from Representative Tom Sloan to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 5, filed May 16, 2007 (Sloan Comments). *But see* AT&T Reply Comments at 20-22 (“Such price conversions [as price-per-bit] would not only be burdensome to produce, but the results would be meaningless and misleading data that would have no corollary in the real world and that would thus be useless for any regulatory purpose.”).

and note that other entities are already gathering pricing information on broadband services.¹³² One commenter suggests that any meaningful standards or comparisons need to somehow account for non-speed differences in service features.¹³³ Another states that the lack of low-cost, standalone broadband service itself may be indicative of a lack of competition.¹³⁴

38. We seek to supplement and enrich the record on broadband price information. We seek comment on requiring providers to report, for each state or each Census Tract in which they offer service, the monthly price the provider charges for standalone broadband service in each of the speed tiers used for Form 477 reporting,¹³⁵ not including any temporary promotional price discounts or any discounts for bundled services. If a provider offers multiple broadband services with different service characteristics within a speed tier (e.g. services that include either a static or a dynamic IP address), or charges different prices for a service for customers in different portions of a state or Census Tract, we seek comment on whether we should require the provider to report the lowest and the highest prices available to consumers within the state or Census Tract, in order to identify the range of prices that a consumer may have to pay. In the alternative, we seek comment on whether we should require providers to report the lowest price for standalone service available to consumers within the state or Census Tract within each speed tier. If a provider has only national pricing for a service, we seek comment on permitting the provider to report the monthly national price for such a service, in lieu of individual state reports. We also seek comment on whether there are any methods to derive a standalone price for broadband service when only bundled services are offered by a provider. Specifically, if a provider does not offer standalone service, but does offer bundled service, we seek comment on whether we should require the provider to report the total monthly price of the least expensive bundle of services that includes the broadband service. We seek comment on whether we should also require providers to report the Average Revenue Per User, or ARPU, for their services. We seek comment on any additional metrics or standards that we may adopt to collect meaningful comparative broadband price information in the presence of widespread service bundling, promotional pricing, flux and variability in broadband service prices, and the variety of optional features associated with services. And finally, we seek comment on whether and in what form the Commission should use the reported service price information.

E. Preserving Confidentiality

39. In the Further Notice above, we seek comment on a national broadband availability mapping program, and on how we can provide information gathered by that program to other broadband initiatives undertaken by federal and state agencies and by public-private partnerships.¹³⁶ Comments in the record indicate concern for the confidentiality of reported data.¹³⁷ In this Further Notice, we seek comment on ways in which we can preserve confidentiality when sharing the information collected on Form 477, the voluntary registry, and other sources with agencies such as the Department of Agriculture's Rural

¹³² See, e.g., AT&T Comments at 27-28 (“[B]roadband pricing trend information is readily available to the Commission from a variety of sources and that most providers offer the same broadband packages at the same or similar pricing throughout their service areas.”); Reply Letter from Edward Shakin, Verizon, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-38, at 15-17, filed July 16, 2007 (Verizon Reply Comments) (“Other parties who report on this information on a more frequent basis, including private analysts, are better positioned to collect pricing data and already provide reports on exactly this topic.”).

¹³³ See AT&T Reply Comments at 20-22.

¹³⁴ See Vonage Comments at 6.

¹³⁵ See paras. 19-22, *supra*.

¹³⁶ See paras. 34-35, *supra*.

¹³⁷ See, e.g., AT&T Reply Comments at 8-11; NTCA Comments at 12-13; CBT Comments 3-4.

Utilities Service and with public-private partnerships such as ConnectKentucky and similar ventures, for example by sharing the data in a less granular or aggregated form than the level at which it is collected.

F. Broadband Customer Surveys

40. We seek comment on whether the Commission should conduct and publish periodic surveys of broadband customers to obtain information about the price, technology, and speed of their connections and to obtain information about the applications and services that they use over the connections. We ask commenters to provide information on the appropriate methodology for conducting such surveys.

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

41. Pursuant to the Regulatory Flexibility Act (“RFA”),¹³⁸ the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) for the Order concerning the possible significant economic impact on small entities by the policies and actions considered in the Order. The text of the FRFA is included in Appendix D.

B. Initial Regulatory Flexibility Analysis

42. Pursuant to the Regulatory Flexibility Act (“RFA”),¹³⁹ the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) for the Further Notice of Proposed Rulemaking for the possible significant economic impact on small entities by the policies and actions considered in this Notice. The text of the IRFA is set forth in Appendix E.

C. Ex Parte Presentations

43. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.¹⁴⁰ Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹⁴¹ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules as well.

D. Comment Filing Procedures

44. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹³⁸ See 5 U.S.C. § 603. The RFA, *see* 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 (“Small Business Act”).

¹³⁹ See 5 U.S.C. § 603. The RFA, *see* 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 (“Small Business Act”).

¹⁴⁰ 47 C.F.R. §§ 1.1200, 1.1206; *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Report and Order, FCC 97-92, 12 FCC Rcd 7348 (1997).

¹⁴¹ 47 C.F.R. § 1.1206(b)(2).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number referenced. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

45. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The pleadings also will be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C. 20554 and through the ECFS, accessible on the Commission's World Wide Website, <http://www.fcc.gov/cgb/ecfs>.

46. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 via the Internet to

Kristy_L._LaLonde@omb.eop.gov or by fax to (202) 395-5167.

47. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules.¹⁴² All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. We also strongly encourage that parties track the organization set forth in this Further Notice in order to facilitate our internal review process.

48. Commenters who file information that they believe is proprietary may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, FCC 99-262, 14 FCC Rcd 20128 (1999).* Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act ("FOIA") must be publicly disclosed pursuant to an appropriate request. *See 47 C.F.R. § 0.461; 5 U.S.C. § 552.* We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

E. Paperwork Reduction Act

49. *Paperwork Reduction Act – Report and Order.* The Report and Order portion of this document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2005, Public Law No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we have considered how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We find that the new and modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the Order. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

50. *Paperwork Reduction Act – Further Notice.* The Further Notice of Proposed Rulemaking contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

F. Congressional Review Act

51. The Commission will include a copy of this Report and Order and Further Notice in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review

¹⁴² 47 C.F.R. § 1.49.

Act. *See* 5 U.S.C. § 801(a)(1)(A).

G. Accessible Formats

52. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

H. Contact Persons

53. For further information about this rulemaking proceeding, please contact Alan Feldman, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418-0940.

VI. ORDERING CLAUSES

54. Accordingly, IT IS ORDERED that, pursuant to sections 1-5, 11, 201-205, 211, 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, 161, 201-205, 211, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt, this Report and Order and Further Notice, with all attachments, IS ADOPTED.

55. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.427(b) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.427(b), that this Report and Order and Further Notice SHALL BE EFFECTIVE 30 days after publication of notice of the Report and Order and Further Notice in the FEDERAL REGISTER, subject to Office of Management and Budget (OMB) approval for new or modified information collection requirements.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
Rules Amended

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 1 – PRACTICE AND PROCEDURE

Part 1 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. Section 1.7001 of the Commission's rules is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1.7001 Scope and Content of Filed Reports

(a) *Definitions.* Terms used in this subpart have the following meanings:

(1) *Facilities-based providers.* 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.

(2) *Own facilities.* 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, fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, that are facilities-based providers, 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 provide service.

(c) Respondents identified in paragraph (b) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

* * * * *

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. Section 43.11 of the Commission's rules is amended by revising paragraphs (a), (b), and (c) 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)), commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in § 20.15(b)(1) of this chapter), and Interconnected Voice over IP service providers (as defined in § 9.3 of this chapter), 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 provide service.

(b) Respondents identified in paragraph (a) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

(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 Wireline Competition 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.

* * * * *

APPENDIX B**Recommended Question for the American and Puerto Rico Community Surveys**

What is the main method household members use to access the Internet from home?

- (1) No members of this household access the Internet from home
- (2) A regular 'dial-up' telephone line
- (3) DSL (Digital Subscriber Line)
- (4) A cable modem
- (5) A fiber optic line
- (6) A wireless or satellite connection
- (7) Some other means

APPENDIX C

List of Parties

<u>Comments</u>	<u>Abbreviation</u>
Alliance for Public Technology	APT
American Cable Association	ACA
American Library Association	ALA
AT&T Inc.	AT&T
California Public Utilities Commission	CPUC
CENTRIS	CENTRIS
Cincinnati Bell Telephone Company LLC	Cincinnati Bell
Communications Workers of America	CWA
COMPTEL	COMPTEL
Connected Nation, Inc.	Connected Nation
Consumers Union, Consumer Federation of America, and Free Press	Consumers Union <i>et al.</i>
CTIA -- The Wireless Association®	CTIA
Embarq	Embarq
The People of the State of Illinois, Lisa Madigan, Attorney General	IL AG
Information Technology Industry Council	ITI
The Information Technology & Innovation Foundation	ITIF
Iowa Utilities Board	IUB
Massachusetts Department of Telecommunications and the Maine Public Utilities Commission	MA/ME Joint Comments
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors, The National Association of Counties, The U.S. Conference of Mayors, and The National League of Cities	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Telecommunications Cooperative Association	NTCA
Native Public Media	NPM
Nebraska Rural Independent Companies	Nebraska Companies
New Jersey Division of Rate Counsel	NJ Rate Counsel
New York State Department of Public Service	NYDPS
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Tom Sloan, 45th District State Representative, State of Kansas	Sloan
Sprint Nextel Corporation	Sprint
Time Warner Cable	TWC
United States Telecom Association	US Telecom
Verizon/Verizon Wireless	Verizon
Vonage Holdings Corp.	Vonage
Wireless Communications Association International, Inc.	WCA

<u>Reply Comments</u>	<u>Abbreviation</u>
American Cable Association	ACA
AT&T Inc.	AT&T
California Public Utilities Commission	CPUC
Consumers Union, Consumer Federation of America, and Free Press	Consumers Union <i>et al.</i>
Missouri Public Service Commission	MPSC
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
New Jersey Division of Rate Counsel	New Jersey Rate Counsel
Sprint Nextel Corporation	Sprint Nextel
Verizon/Verizon Wireless	Verizon

<u>Ex Parte Presentations</u>	<u>Abbreviation</u>
AT&T Inc.	AT&T
Connected Nation, Inc.	Connected Nation
Cox Enterprises, Inc.	Cox
CTIA -- The Wireless Association®	CTIA
M2Z Networks, Inc.	M2Z
National Telecommunications Cooperative Association	NTCA
Verizon	Verizon

APPENDIX D**Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹⁴³ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the April 2007 Data Gathering Notice.¹⁴⁴ The Commission sought written public comment on the proposals in the Data Gathering Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.¹⁴⁵

A. Need for, and Objectives of, the Order

2. In today's Report and Order (Order), we adopt certain changes to Form 477 to collect additional, improved data on broadband availability and use. We amend the FCC Form 477 data collection in several respects to collect additional data on broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."¹⁴⁶

3. These changes include requiring certain reporting entities to report broadband service subscribership counts within Census Tracts, and to report Census Tract information concerning the availability of their broadband services. The Order also changes the speed tiers under which broadband connections are reported, establishes new terminology for levels of broadband connection speed, and changes Form 477 to collect certain subscribership information from wireless and interconnected VoIP service providers.¹⁴⁷ These new reporting requirements will facilitate the Commission's understanding of the extent of broadband deployment in the United States, particularly deployment in unserved and underserved areas.

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

4. We recognize that many businesses, including small rural ILECs, will need to modify their practices to collect, maintain, and report additional data at the Census Tract level.¹⁴⁸ We are not persuaded by comments in the record arguing that the costs of complying with the increased reporting

¹⁴³ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

¹⁴⁴ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760, 7765-66, paras. 10-12 (2007) (*Data Gathering Notice*).

¹⁴⁵ See 5 U.S.C. § 604.

¹⁴⁶ 47 U.S.C. § 157 nt (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

¹⁴⁷ Interconnected VoIP service is a service that enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires Internet-protocol compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. See 47 C.F.R. § 9.3.

¹⁴⁸ See NTCA Comments at 9-11.

requirements in today's Order outweigh the benefits of collecting additional data, and we are persuaded by comments indicating that we ought to collect information at a more granular level, and in particular at the level of Census Tracts.¹⁴⁹ Nevertheless, in the Order, we provide an express exception to this rule of which small business can avail themselves. Specifically, upon a showing of significant hardship, reporting businesses will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address and whether the service is residential or business, in lieu of reporting subscriber counts by technology, speed, residential/business, and Census Tract.¹⁵⁰ Comments in the record also contend that the Data Gathering Notice failed to include a complete estimate of the costs and burdens of compliance as a general matter.¹⁵¹ However, the record developed in this proceeding, in response to the Data Gathering Notice, demonstrate that the costs would not be burdensome.¹⁵² More importantly, other than conclusory assertions that the data collection, as proposed in the Data Collection Order, would be burdensome, the record includes no convincing evidence of any specific, actual burden, such as employee hours or monetary costs, to support these assertions.¹⁵³

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

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.¹⁵⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁵⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁵⁶ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁵⁷

6. *Incumbent Local Exchange Carriers (ILECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵⁸

¹⁴⁹ See Report and Order, Section III.A and discussion therein on issues of burden.

¹⁵⁰ See *id.*

¹⁵¹ See OPASTCO Comments at 8-9; NTCA Comments at 10.

¹⁵² See Report and Order, Section III.A and discussion therein on issues of burden.

¹⁵³ *Id.*

¹⁵⁴ 5 U.S.C. § 604(a)(3).

¹⁵⁵ 5 U.S.C. § 601(6).

¹⁵⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹⁵⁷ 15 U.S.C. § 632.

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

According to Commission data,¹⁵⁹ 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

7. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.” Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁰ According to Commission data,¹⁶¹ 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees.¹⁶² In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

8. We have included small incumbent local exchange carriers (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.”¹⁶³ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁶⁴ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁵ According to Commission data,¹⁶⁶ 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

¹⁵⁹ *Trends in Telephone Service* at Table 5.3.

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

¹⁶¹ *Trends in Telephone Service* at Table 5.3.

¹⁶² *Id.*

¹⁶³ 5 U.S.C. § 601(3).

¹⁶⁴ 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 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁶⁵ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁶⁶ *Trends in Telephone Service* at Table 5.3.

10. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁷ According to Commission data,¹⁶⁸ 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

11. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁹ According to Commission data,¹⁷⁰ 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

12. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁷¹ According to Commission data,¹⁷² 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees.¹⁷³ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

13. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁷⁴ According to Commission data,¹⁷⁵ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

14. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a

¹⁶⁷ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁶⁸ *Trends in Telephone Service* at Table 5.3.

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

¹⁷⁰ *Trends in Telephone Service* at Table 5.3.

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

¹⁷² *Trends in Telephone Service* at Table 5.3.

¹⁷³ *Id.*

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

¹⁷⁵ *Trends in Telephone Service* at Table 5.3.

business is small if it has 1,500 or fewer employees.¹⁷⁶ According to Commission data,¹⁷⁷ 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

15. *800 and 800-Like Service Subscribers.*¹⁷⁸ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁷⁹ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.¹⁸⁰ According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

1. Wireless Carriers and Service Providers

16. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

17. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.¹⁸¹ Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of “Paging” and “Cellular and Other Wireless Telecommunications.”¹⁸² Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.¹⁸³ Of this total, 804 firms had

¹⁷⁶ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁷⁷ *Trends in Telephone Service* at Table 5.3.

¹⁷⁸ We include all toll-free number subscribers in this category, including those for 888 numbers.

¹⁷⁹ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁸⁰ *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

¹⁸¹ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸² 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

¹⁸³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.¹⁸⁴ For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.¹⁸⁵ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.¹⁸⁶ Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.¹⁸⁷ We have estimated that 221 of these are small, under the SBA small business size standard.¹⁸⁸ Thus, under this category and size standard, about half of firms can be considered small. This information is also included in paragraph 23.

18. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees.¹⁸⁹ According to Commission data,¹⁹⁰ 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹⁹¹ A “small business” is 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 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.¹⁹² The SBA has approved these small business size standards.¹⁹³ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.¹⁹⁴

¹⁸⁴ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

¹⁸⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

¹⁸⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

¹⁸⁷ *Trends in Telephone Service* at Table 5.3.

¹⁸⁸ *Id.*

¹⁸⁹ 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

¹⁹⁰ *Trends in Telephone Service* at Table 5.3.

¹⁹¹ *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (*220 MHz Third Report and Order*).

¹⁹² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

¹⁹³ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

¹⁹⁴ *Id.* at 10085, para. 98.

Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

19. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.¹⁹⁵ The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

20. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.¹⁹⁶ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁹⁷ According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.¹⁹⁸ We have estimated that 221 of these are small under the SBA small business size standard.

21. *Broadband Personal Communications Service.* The broadband Personal Communications Service (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 \$40 million or less in the three previous calendar years.¹⁹⁹ 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.²⁰⁰ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.²⁰¹ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.²⁰² On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as

¹⁹⁵ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

¹⁹⁶ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁹⁷ *Id.*

¹⁹⁸ *Trends in Telephone Service* at Table 5.3.

¹⁹⁹ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

²⁰⁰ *Id.*

²⁰¹ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

²⁰² FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

“small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

22. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.²⁰³ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.²⁰⁴ In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

23. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. 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 small business size standard for 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 small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.²⁰⁵ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

24. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. 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 a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²⁰⁶ This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross

²⁰³ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

²⁰⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

²⁰⁵ 13 C.F.R. § 121.201, NAICS code 517212.

²⁰⁶ *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, at paras. 291-95.

revenues not exceeding \$15 million for the preceding three years.²⁰⁷ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.²⁰⁸ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.²⁰⁹ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.²¹⁰

25. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.²¹¹ These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

26. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²¹² 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 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. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.²¹³ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders.

²⁰⁷ *Id.* at 11068-70, para. 291.

²⁰⁸ See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

²⁰⁹ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

²¹⁰ *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

²¹¹ 47 C.F.R. § 90.814(b)(1).

²¹² See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

²¹³ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

One of these bidders was a small business that won a total of two licenses.²¹⁴

27. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.²¹⁵ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).²¹⁶ The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.²¹⁷ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

28. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.²¹⁸ We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.²¹⁹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

29. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.²²⁰ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.²²¹ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission

²¹⁴ *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (2001).

²¹⁵ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

²¹⁶ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

²¹⁷ 13 C.F.R. § 121.201, NAICS code 517210.

²¹⁸ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

²¹⁹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

²²⁰ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

²²¹ *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

30. *Fixed Microwave Services.* Fixed microwave services include common carrier,²²² private operational-fixed,²²³ and broadcast auxiliary radio services.²²⁴ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.²²⁵ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

31. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.²²⁶ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services.²²⁷ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.²²⁸

32. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.²²⁹ An additional size standard for “very small business” is: an entity that, together with

²²² See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

²²³ 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.

²²⁴ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. This service is 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 television pickups, which relay signals from a remote location back to the studio.

²²⁵ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

²²⁶ This service is governed by Subpart I of Part 22 of the Commission’s Rules. See 47 C.F.R. §§ 22.1001-22.1037.

²²⁷ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

²²⁸ *Id.*

²²⁹ See *Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Red 18600 (1998).

affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²³⁰ The SBA has approved these small business size standards.²³¹ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

33. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),²³² and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),²³³ to transmit video programming and provide broadband services to residential subscribers.²³⁴ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.²³⁵ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.²³⁶ As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.²³⁷ Other standards also apply, as described.

34. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,²³⁸ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar

²³⁰ *Id.*

²³¹ See Letter to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

²³² MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) (“*MDS/ITFS Order*”).

²³³ ITFS systems are regulated by Part 74 of the Commission’s rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

²³⁴ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) (“*2006 Cable Competition Report*”).

²³⁵ *Id.*

²³⁶ See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

²³⁷ 13 C.F.R. § 121.201, NAICS code 517510.

²³⁸ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

years.²³⁹ This definition of a small entity in the context of MDS auctions has been approved by the SBA.²⁴⁰ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.²⁴¹ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

35. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).²⁴² We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

36. In the 1998 and 1999 LMDS auctions,²⁴³ the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.²⁴⁴ Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.²⁴⁵ These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.²⁴⁶ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

37. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557

²³⁹ 47 C.F.R. § 21.961(b)(1).

²⁴⁰ See *ITFS Order*, 10 FCC Rcd at 9589.

²⁴¹ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

²⁴² In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

²⁴³ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

²⁴⁴ See *LMDS Order*, 12 FCC Rcd at 12545.

²⁴⁵ *Id.*

²⁴⁶ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.²⁴⁷ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.²⁴⁸ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.²⁴⁹ These size standards will be used in future auctions of 218-219 MHz spectrum.

38. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.²⁵⁰ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent²⁵¹ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

39. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.²⁵² “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.²⁵³ The SBA has approved these small business size standards.²⁵⁴ These size standards will apply to the future auction, if held.

2. Satellite Service Providers

40. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within

²⁴⁷ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

²⁴⁸ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

²⁴⁹ *Id.*

²⁵⁰ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

²⁵¹ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

²⁵² *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

²⁵³ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

²⁵⁴ *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

this revised category, with a small business size standard of \$13.5 million.²⁵⁵ The most current Census Bureau data, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both prior categories, such a business was considered small if it had, as now, \$13.5 million or less in average annual receipts.²⁵⁶

41. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”²⁵⁷ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.²⁵⁸ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.²⁵⁹ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

42. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”²⁶⁰ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.²⁶¹ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.²⁶² Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

3. Cable and OVS Operators

43. In 2007, the SBA recognized new census categories for small cable entities.²⁶³ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. 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

²⁵⁵ 13 C.F.R. § 121.201, NAICS code 517410 (2007).

²⁵⁶ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

²⁵⁷ U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

²⁵⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

²⁵⁹ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

²⁶⁰ U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

²⁶¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

²⁶² *Id.* An additional 14 firms had annual receipts of \$25 million or more.

²⁶³ 13 C.F.R. § 121.201.

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.

44. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.”²⁶⁴ The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.²⁶⁵ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.²⁶⁶ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.²⁶⁷ Thus, under this size standard, the majority of firms can be considered small.

45. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.²⁶⁸ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁶⁹ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²⁷⁰ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.²⁷¹ Thus, under this second size standard, most cable systems are small.

46. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 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

²⁶⁴ U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

²⁶⁵ 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to “Wired Telecommunications Carriers,” NAICS code 517110.).

²⁶⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

²⁶⁷ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

²⁶⁸ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

²⁶⁹ These data are derived from R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

²⁷⁰ 47 C.F.R. § 76.901(c).

²⁷¹ Warren Communications News, *Television & Cable Factbook 2006*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

\$250,000,000.²⁷² The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁷³ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²⁷⁴ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁷⁵ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

47. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.²⁷⁶ As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.²⁷⁷ This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.²⁷⁸ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

4. Electric Power Generation, Transmission and Distribution

48. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”²⁷⁹ The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the

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

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

²⁷⁴ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

²⁷⁵ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

²⁷⁶ See 47 U.S.C. § 573.

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

²⁷⁸ See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

²⁷⁹ U.S. Census Bureau, 2002 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF221.HTM>.

preceding fiscal year did not exceed 4 million megawatt hours.”²⁸⁰ According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.²⁸¹ Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

5. Internet Service Providers, Web Portals and Other Information Services

49. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,²⁸² and (2) All Other Information Services.²⁸³ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

50. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”²⁸⁴ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.²⁸⁵ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.²⁸⁶ Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

51. *Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”²⁸⁷ The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.²⁸⁸ According to Census Bureau data for 2002, there were 342 firms in

²⁸⁰ 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, footnote 1.

²⁸¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122 (issued Nov. 2005).

²⁸² 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

²⁸³ 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

²⁸⁴ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

²⁸⁵ 13 C.F.R. § 121.201, NAICS code 518111.

²⁸⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

²⁸⁷ U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

²⁸⁸ 13 C.F.R. § 121.201, NAICS code 518112.

this category that operated for the entire year.²⁸⁹ Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

52. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”²⁹⁰ The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.²⁹¹ According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.²⁹² Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

53. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”²⁹³ Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.²⁹⁴ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.²⁹⁵ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

54. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”²⁹⁶ The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.²⁹⁷ According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.²⁹⁸ Of these, 1,351 had employment of 499 or fewer employees, and six firms

²⁸⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

²⁹⁰ U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

²⁹¹ 13 C.F.R. § 121.201, NAICS code 518210.

²⁹² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

²⁹³ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

²⁹⁴ 13 C.F.R. § 121.201, NAICS code 519190.

²⁹⁵ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

²⁹⁶ U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

²⁹⁷ 13 C.F.R. § 121.201, NAICS code 516110.

²⁹⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005).

had employment of between 500 and 999. Consequently, we estimate that the majority of these firms small entities that may be affected by our action.

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

55. In today's Order, we require broadband providers to report the number of broadband connections they have in service in individual Census Tracts; we require providers to report subscriber counts under alternative speed tiers; we require mobile wireless broadband providers to report the number of subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice; and we require providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information.²⁹⁹ While both large and small entities will be subject to these reporting requirements, the task is comparably easier for smaller entities that provide service to fewer customers and in more concentrated geographic areas, as the reporting procedures are broken down by geographic region and type of service. Few skills beyond the basic accounting skills already required of Form 477 filers, including small entities, are required to comply with the new and modified reporting and recordkeeping requirements; specifically, they will need to modify their billing systems in order to accommodate the reporting of information by Census Tract.

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

56. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁰⁰

57. In the Data Gathering Notice, we invited comment on a variety of proposals that would impose further reporting and recordkeeping requirements, including alternatives to the measures taken in this Order.³⁰¹ We sought comment whether there are any alternatives to the proposals in the order that would also serve the objective of improving broadband data collection,³⁰² and we invited comment on ways to mitigate the burden that might be imposed on small entities.³⁰³ We sought comment on how the proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable the Commission to determine whether subscribers in those territories have access to broadband services.³⁰⁴ To analyze the impact on small entities, the Data Gathering Notice asked whether entities maintain the required information in billing or marketing databases, and asked commenters to demonstrate the burden for the entities to collect and report this type of information.³⁰⁵

²⁹⁹ See paras. 10-37, *supra*.

³⁰⁰ 5 U.S.C. § 603(c).

³⁰¹ See *Data Gathering Notice* at section III.B.

³⁰² See *id.* at para. 38.

³⁰³ See *id.* at para. 24; see *id.* at section III.

³⁰⁴ See *id.* at para. 24.

³⁰⁵ See, e.g., *id.* at Appendix, para. 59; *id.* at para. 31.

58. We find that the approach adopted in today's Order best balances the costs of information collection and the public interest benefits of more detailed information on broadband deployment.³⁰⁶ Collecting subscriber count information at the Census Tract level, as compared to collecting information at the 5-digit or 9-digit ZIP Code level or some other unit, results in a greatly improved understanding of the market for broadband services while imposing a minimum burden on reporting entities.³⁰⁷ Additionally, we offer an alternative format for reporting under which the Commission undergoes the efforts involved with converting service address information to census-based data units.³⁰⁸ While additional information collected by other methods, such as public-private partnerships, self-reporting, and the U.S. Census, can supplement required reporting by service providers, these methods have many limitations and are not sufficient by themselves, and cannot replace existing Form 477 reported information.³⁰⁹

59. We did create an alternative for businesses for which the Census Tract reporting poses a specific hardship.³¹⁰ Upon a showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address and whether the service is residential or business, in lieu of reporting subscriber counts by technology, speed, residential/business, and Census Tract. This alternative will merely require an entity to report the data it already has, and the Commission will use its own resources to analyze the data.

60. While we recognize that service providers will still incur implementation and recurrent costs for these modified reporting requirements, we conclude that the benefits to the public of gathering more complete information on the extent of broadband deployment outweigh the economic burden imposed on these providers.³¹¹ To the extent that a reporting entity would suffer a significant hardship, we have created an alternative reporting requirement.³¹²

61. **Report to Congress:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³¹³ In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.³¹⁴

³⁰⁶ See *Report and Order*, Section III.A for discussion regarding benefits and burdens of new rule.

³⁰⁷ See section III.A, *supra*.

³⁰⁸ *Id.*

³⁰⁹ See, e.g., NATOA et al. Comments at 12-14.

³¹⁰ See section III.A, *supra*.

³¹¹ See *Report and Order*, Section III.A for discussion regarding benefits and burdens of new rule.

³¹² *Id.*

³¹³ See 5 U.S.C. § 801(a)(1)(A).

³¹⁴ See 5 U.S.C. § 604(b).

APPENDIX E**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),³¹⁵ the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's Further Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.³¹⁶ In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.³¹⁷

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

2. In the Further Notice, the Commission considers how to best implement certain reporting requirements and whether there are additional reporting requirements it should adopt to improve the ability of the Commission to understand the extent of deployment of broadband and related services. Specifically, the Commission seeks comment on whether to require local exchanges carriers and interconnected VoIP service providers to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level. The Commission seeks comment on whether to create a broadband mapping program, and on information that can be collected and included in the program. The Commission also seeks comment on whether it should require reporting of information on price of broadband services, and information on actual, delivered broadband speeds, and the Commission seeks comment on standards and methodologies appropriate for the collection of this data. Finally, the Commission seeks general comments on ways to maintain the privacy of the currently reported data as well as the new data collections proposed in the Further Notice, and on appropriate methodologies for the creation of broadband consumer surveys to acquire additional information. For each of these issues, the Commission also seeks comment on the burdens, including those placed on small carriers, associated with corresponding Commission rules related to each issue and whether there are alternative rules that might lessen any burden.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the Notice is contained in 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 section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt.

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

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.³¹⁸ The RFA generally

³¹⁵ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

³¹⁶ See 5 U.S.C. § 603(a).

³¹⁷ See 5 U.S.C. § 603(a).

³¹⁸ 5 U.S.C. § 604(a)(3).

defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³¹⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³²⁰ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³²¹

5. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³²² According to Commission data,³²³ 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

6. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³²⁴ According to Commission data,³²⁵ 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees.³²⁶ In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

7. We have included small incumbent local exchange carriers (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

³¹⁹ 5 U.S.C. § 601(6).

³²⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³²¹ 15 U.S.C. § 632.

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

³²³ *Trends in Telephone Service* at Table 5.3.

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

³²⁵ *Trends in Telephone Service* at Table 5.3.

³²⁶ *Id.*

employees), and “is not dominant in its field of operation.”³²⁷ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³²⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³²⁹ According to Commission data,³³⁰ 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

9. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³¹ According to Commission data,³³² 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

10. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³³ According to Commission data,³³⁴ 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

11. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³⁵ According to Commission data,³³⁶ 330 companies reported that their primary telecommunications service activity was the provision

³²⁷ 5 U.S.C. § 601(3).

³²⁸ 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 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

³²⁹ 13 C.F.R. § 121.201, NAICS code 517911.

³³⁰ *Trends in Telephone Service* at Table 5.3.

³³¹ 13 C.F.R. § 121.201, NAICS code 517911.

³³² *Trends in Telephone Service* at Table 5.3.

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

³³⁴ *Trends in Telephone Service* at Table 5.3.

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

³³⁶ *Trends in Telephone Service* at Table 5.3.

of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees.³³⁷ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

12. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³⁸ According to Commission data,³³⁹ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

13. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴⁰ According to Commission data,³⁴¹ 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

14. *800 and 800-Like Service Subscribers*.³⁴² Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴³ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.³⁴⁴ According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

1. Wireless Carriers and Service Providers

15. Below, for those services subject to auctions, we note that, as a general matter, the

³³⁷ *Id.*

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

³³⁹ *Trends in Telephone Service* at Table 5.3.

³⁴⁰ 13 C.F.R. § 121.201, NAICS code 517911.

³⁴¹ *Trends in Telephone Service* at Table 5.3.

³⁴² We include all toll-free number subscribers in this category, including those for 888 numbers.

³⁴³ 13 C.F.R. § 121.201, NAICS code 517911.

³⁴⁴ *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

16. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.³⁴⁵ Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of “Paging” and “Cellular and Other Wireless Telecommunications.”³⁴⁶ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.³⁴⁷ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.³⁴⁸ For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.³⁴⁹ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.³⁵⁰ Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.³⁵¹ We have estimated that 221 of these are small, under the SBA small business size standard.³⁵² Thus, under this category and size standard, about half of firms can be considered small. This information is also included in paragraph 23.

17. *Common Carrier Paging*. The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees.³⁵³ According to Commission data,³⁵⁴ 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we developed a small business size standard

³⁴⁵ 13 C.F.R. § 121.201, NAICS code 517210.

³⁴⁶ 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

³⁴⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

³⁴⁸ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

³⁴⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

³⁵⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

³⁵¹ *Trends in Telephone Service* at Table 5.3.

³⁵² *Id.*

³⁵³ 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

³⁵⁴ *Trends in Telephone Service* at Table 5.3.

for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁵⁵ A “small business” is 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 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.³⁵⁶ The SBA has approved these small business size standards.³⁵⁷ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.³⁵⁸ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

18. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.³⁵⁹ The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

19. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.³⁶⁰ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.³⁶¹ According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.³⁶² We have estimated that 221 of these are small under the SBA small business size standard.

20. *Broadband Personal Communications Service.* The broadband Personal Communications Service (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 \$40 million or less in the three previous calendar

³⁵⁵ *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (*220 MHz Third Report and Order*).

³⁵⁶ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

³⁵⁷ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

³⁵⁸ *Id.* at 10085, para. 98.

³⁵⁹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

³⁶⁰ 13 C.F.R. § 121.201, NAICS code 517212.

³⁶¹ *Id.*

³⁶² *Trends in Telephone Service* at Table 5.3.

years.³⁶³ 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.³⁶⁴ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.³⁶⁵ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.³⁶⁶ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

21. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.³⁶⁷ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.³⁶⁸ In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

³⁶³ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

³⁶⁴ *Id.*

³⁶⁵ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

³⁶⁶ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

³⁶⁷ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

³⁶⁸ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

22. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. 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 small business size standard for 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 small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.³⁶⁹ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

23. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. 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 a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁷⁰ This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.³⁷¹ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.³⁷² Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.³⁷³ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.³⁷⁴

24. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.³⁷⁵ These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

³⁶⁹ 13 C.F.R. § 121.201, NAICS code 517212.

³⁷⁰ *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, at paras. 291-95.

³⁷¹ *Id.* at 11068-70, para. 291.

³⁷² See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

³⁷³ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

³⁷⁴ *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

³⁷⁵ 47 C.F.R. § 90.814(b)(1).

The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

25. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁷⁶ 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 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. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.³⁷⁷ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.³⁷⁸

26. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.³⁷⁹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).³⁸⁰ The Commission uses the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.³⁸¹ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.³⁸² We will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.³⁸³ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

28. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency

³⁷⁶ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

³⁷⁷ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

³⁷⁸ *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (2001).

³⁷⁹ The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

³⁸⁰ BETRS is defined in sections 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

³⁸¹ 13 C.F.R. § 121.201, NAICS code 517210.

³⁸² The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

³⁸³ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.³⁸⁴ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.³⁸⁵ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

29. *Fixed Microwave Services.* Fixed microwave services include common carrier,³⁸⁶ private operational-fixed,³⁸⁷ and broadcast auxiliary radio services.³⁸⁸ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.³⁸⁹ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be

³⁸⁴ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

³⁸⁵ *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

³⁸⁶ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission’s Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

³⁸⁷ 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.

³⁸⁸ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. This service is 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 television pickups, which relay signals from a remote location back to the studio.

³⁸⁹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

30. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.³⁹⁰ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.³⁹¹ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.³⁹²

31. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.³⁹³ An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³⁹⁴ The SBA has approved these small business size standards.³⁹⁵ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

32. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service ("BRS"), formerly Multipoint Distribution Service ("MDS"),³⁹⁶ and the Educational Broadband Service ("EBS"), formerly Instructional Television Fixed Service ("ITFS"),³⁹⁷ to transmit video programming and provide broadband services to residential subscribers.³⁹⁸ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional

³⁹⁰ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

³⁹¹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

³⁹² *Id.*

³⁹³ See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600 (1998).

³⁹⁴ *Id.*

³⁹⁵ See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

³⁹⁶ MDS, also known as Multichannel Multipoint Distribution Service ("MMDS"), is regulated by Part 21 of the Commission's rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) ("*MDS/ITFS Order*").

³⁹⁷ ITFS systems are regulated by Part 74 of the Commission's rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

³⁹⁸ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) ("*2006 Cable Competition Report*").

cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.³⁹⁹ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁴⁰⁰ As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.⁴⁰¹ Other standards also apply, as described.

33. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,⁴⁰² the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁴⁰³ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁴⁰⁴ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.⁴⁰⁵ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission’s auction rules.

34. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).⁴⁰⁶ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

35. In the 1998 and 1999 LMDS auctions,⁴⁰⁷ the Commission defined a small business as an

³⁹⁹ *Id.*

⁴⁰⁰ See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

⁴⁰¹ 13 C.F.R. § 121.201, NAICS code 517510.

⁴⁰² MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

⁴⁰³ 47 C.F.R. § 21.961(b)(1).

⁴⁰⁴ See *ITFS Order*, 10 FCC Rcd at 9589.

⁴⁰⁵ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standards for “other telecommunications” (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

⁴⁰⁶ In addition, the term “small entity” under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

⁴⁰⁷ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.⁴⁰⁸ Moreover, the Commission added an additional classification for a “very small business,” which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.⁴⁰⁹ These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA.⁴¹⁰ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

36. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.⁴¹¹ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.⁴¹² A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.⁴¹³ These size standards will be used in future auctions of 218-219 MHz spectrum.

37. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.⁴¹⁴ We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent⁴¹⁵ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

38. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the

⁴⁰⁸ See *LMDS Order*, 12 FCC Rcd at 12545.

⁴⁰⁹ *Id.*

⁴¹⁰ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

⁴¹¹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

⁴¹² *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

⁴¹³ *Id.*

⁴¹⁴ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

⁴¹⁵ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.⁴¹⁶ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.⁴¹⁷ The SBA has approved these small business size standards.⁴¹⁸ These size standards will apply to the future auction, if held.

2. Satellite Service Providers

39. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$13.5 million.⁴¹⁹ The most current Census Bureau data, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both prior categories, such a business was considered small if it had, as now, \$13.5 million or less in average annual receipts.⁴²⁰

40. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁴²¹ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.⁴²² Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.⁴²³ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

41. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and

⁴¹⁶ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

⁴¹⁷ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

⁴¹⁸ *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

⁴¹⁹ 13 C.F.R. § 121.201, NAICS code 517410 (2007).

⁴²⁰ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

⁴²¹ U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴²² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

⁴²³ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”⁴²⁴ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁴²⁵ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁴²⁶ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

3. Cable and OVS Operators

42. In 2007, the SBA recognized new census categories for small cable entities.⁴²⁷ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. 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.

43. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.”⁴²⁸ The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.⁴²⁹ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.⁴³⁰ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.⁴³¹ Thus, under this size standard, the majority of firms can be considered small.

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

⁴²⁴ U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴²⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

⁴²⁶ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁴²⁷ 13 C.F.R. § 121.201.

⁴²⁸ U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴²⁹ 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to “Wired Telecommunications Carriers,” NAICS code 517110.).

⁴³⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

⁴³¹ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

cable company” is one serving 400,000 or fewer subscribers, nationwide.⁴³² Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁴³³ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.⁴³⁴ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.⁴³⁵ Thus, under this second size standard, most cable systems are small.

45. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 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.”⁴³⁶ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁴³⁷ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.⁴³⁸ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,⁴³⁹ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.⁴⁴⁰ As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.⁴⁴¹ This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and

⁴³² 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁴³³ These data are derived from R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁴³⁴ 47 C.F.R. § 76.901(c).

⁴³⁵ Warren Communications News, *Television & Cable Factbook 2006*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

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

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

⁴³⁸ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

⁴³⁹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. *See* 47 C.F.R. § 76.909(b).

⁴⁴⁰ *See* 47 U.S.C. § 573.

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

some of these are currently providing service.⁴⁴² Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

4. Electric Power Generation, Transmission and Distribution

47. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”⁴⁴³ The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”⁴⁴⁴ According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.⁴⁴⁵ Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

5. Internet Service Providers, Web Portals and Other Information Services

48. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,⁴⁴⁶ and (2) All Other Information Services.⁴⁴⁷ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

49. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”⁴⁴⁸ Under the SBA size standard, such a business is small if it has average annual

⁴⁴² See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

⁴⁴³ U.S. Census Bureau, 2002 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF221.HTM>.

⁴⁴⁴ 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, footnote 1.

⁴⁴⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122 (issued Nov. 2005).

⁴⁴⁶ 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

⁴⁴⁷ 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

⁴⁴⁸ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

receipts of \$23 million or less.⁴⁴⁹ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.⁴⁵⁰ Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

50. *Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”⁴⁵¹ The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.⁴⁵² According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.⁴⁵³ Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

51. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”⁴⁵⁴ The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.⁴⁵⁵ According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.⁴⁵⁶ Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

52. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”⁴⁵⁷ Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and

⁴⁴⁹ 13 C.F.R. § 121.201, NAICS code 518111.

⁴⁵⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

⁴⁵¹ U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

⁴⁵² 13 C.F.R. § 121.201, NAICS code 518112.

⁴⁵³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

⁴⁵⁴ U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

⁴⁵⁵ 13 C.F.R. § 121.201, NAICS code 518210.

⁴⁵⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

⁴⁵⁷ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.⁴⁵⁸ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.⁴⁵⁹ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

53. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”⁴⁶⁰ The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.⁴⁶¹ According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.⁴⁶² Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

54. In the Further Notice, we propose five additional or modified information collections that would impose further reporting and recordkeeping requirements on current Form 477 filers, including small entities. Specifically, the Further Notice invites comment on whether and how Form 477 filers should 1) report subscriber counts for voice-grade lines and channels and interconnected voice over Internet Protocol (VoIP) services at the Zip Code or Census Tract level, 2) report additional information to build a map of broadband service availability, 3) report additional information on broadband service pricing, perhaps taking service bundling and discounts into account, and 4) report information on actual, delivered speeds of broadband services. We invite comments on the merits and methodologies of such information collections to include suggestions and discussions of other alternatives not specifically discussed in the Further Notice that would meet the objectives of the Further Notice but would impose lesser burdens on smaller entities.

55. Based on these questions, we anticipate that a record will be developed concerning actual burden and alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband deployment and availability throughout the nation.

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

56. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account

⁴⁵⁸ 13 C.F.R. § 121.201, NAICS code 519190.

⁴⁵⁹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

⁴⁶⁰ U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

⁴⁶¹ 13 C.F.R. § 121.201, NAICS code 516110.

⁴⁶² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005).

the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴⁶³

57. As noted above, the Further Notice invites comment on whether and how current Form 477 filers should 1) report subscriber counts for voice-grade lines and channels at the Zip Code or Census Tract level, 2) report other information to build a map of broadband service availability, 3) report additional information on broadband service pricing, perhaps taking service bundling and discounts into effect, and 4) report information on actual, delivered speeds of broadband services. The Further Notice seeks comment on possible methods for reporting the proposed information collections, as well as suggestions of methods to maintain and report the information that achieve the purposes of the Further Notice while minimizing the burden on reporting entities, including small entities. This information will assist the Commission in determining whether these various proposed information collections would impose a significant economic impact on small entities.

58. Based on these questions, and the alternatives we have discussed, we anticipate that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband availability throughout the nation.

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

59. None.

⁴⁶³ 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip, WC Docket No. 07-38.

Re: 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, GN Docket No. 07-45.

Since becoming Chairman, I have made broadband deployment the Commission's top priority. Broadband technology is a key driver of economic growth. The ability to share increasing amounts of information at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation. But perhaps most important, broadband has the potential to affect almost every aspect of our lives – from where we work, to how we educate our children and increasingly to the way healthcare is delivered.

Continued broadband deployment and infrastructure investment is vital to this country's economic growth. The Commission has developed a number of policies to encourage the deployment of broadband. We have removed regulatory obstacles that discouraged infrastructure investment and slowed deployment. We have classified DSL, BPL and Wireless broadband as "information services" not subject to legacy regulations. We have streamlined the franchise process for new entrants and incumbent cable providers and banned exclusive contracts in apartment buildings to spur competition that is essential to further investment in underlying infrastructure for broadband. We initiated a nationwide pilot program for the deployment of broadband infrastructure for healthcare facilities. We have also just completed the largest auction in FCC history of spectrum that is ideally suited to broadband.

The United States is the largest broadband market in the world and our newest report finds continued growth. During the first half of 2007, high speed lines increased by 22 percent, from over 82 million to over 100 million lines. Since I joined the Commission, these lines have grown 950% from just over 9 million lines to over 100 million lines. Our analysis indicates that more than 99% of the country's population lives in the more than 99% of Zip Codes where a provider reports having at least one high-speed service subscriber. Additionally, nationwide, we estimate that high-speed DSL connections were available to 82% of the households to whom ILECs provide local phone service as of the end of June 2007. High-speed cable modem service was available to 96% of the households to whom cable operators provide cable TV service. This is good news for consumers and good news for the country. Accordingly, I support the conclusion in the Section 706 report that broadband services are currently being deployed to all Americans in a reasonable and timely fashion.

But there is certainly more work to be done. That is why I am pleased the Commission today adopts an Order to collect dramatically improved data on broadband services. This improved data will enable us to better identify and analyze the deployment of broadband throughout the nation.

As the importance of broadband continues to increase, it is important that we understand better how and where broadband is being deployed by providers and used by consumers. Today's Order will require detailed subscriberhip information on a local level and detailed information about the download and upload speeds of broadband services offered to consumers. Specifically, we will collect information in the following tiers of service:

- First Generation data: 200k up to 768k
- Basic Broadband : 768k to 1.5mbps
- 1.5mbps to 3.0mbps
- 3.0mbps to 6.0 mbps
- 6.0mbps and above

Additionally, we conclude that we will obtain and map additional information about broadband service availability to better direct resources toward unserved and underserved areas. Armed with this additional broadband data, the Commission will be better able to assess and promote the deployment of broadband across the nation.

I am pleased that the Commission, by its actions today, continues to take additional steps to further broadband deployment.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS
APPROVING IN PART, CONCURRING IN PART

Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscription Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscription, WC Docket 07-38.

Good data, as you quickly learn serving at the FCC, is the bedrock of good policy. And creating good data is really a core function of government. Certainly it is essential to making sure that markets work and consumers are protected. When stocks rise or fall based on quarterly earnings reports, it is because government requires companies to provide this information and regulates how it is reported. When manufacturers revise their production targets based on economic indicators like unemployment and GDP, they are basing their most critical business decisions on government statistics. When schools, universities, hospitals, and other essential American institutions make projections about future demand, they are using government census data. If federal and state governments decided tomorrow to stop gathering data and regulating how it is reported, the U.S. economy would come to a screeching halt.

It has therefore been with great disappointment that I have watched the FCC fail year after year to get serious about gathering high-quality U.S. broadband data. I'm sure my colleagues think I'm a broken record because I bring up this issue so often. But the truth remains that, time and time again, we have failed to heed the call of scholars, industry, consumers, and the Government Accounting Office to improve our data-gathering. It was starting to look like the FCC wanted to be part of the problem rather than part of the solution. This point has not been lost on Congress, which has moved forward recently on a bi-partisan basis with legislation to require the FCC and other branches of government to do what we should have been doing all along. I will spare you all my full broadband data stump speech today, except to say that it is truly shocking that we *still* rely on an absurdly dated definition of broadband speed and a 5-digit ZIP code methodology that didn't pass the red face test even when we introduced it many years ago.

Our prolonged failure to create high quality broadband data is emphatically *not* just an academic concern. It has real-world, dollars-and-cents consequences. When companies and investors put money into e-commerce, Internet video, VoIP and other technologies that ride on consumer broadband connections, they need to know what kinds of broadband infrastructure America actually has. They need to know how many Americans have a broadband connection, where those consumers are located, how fast their connections actually are, and—importantly—how much they cost. The broadband data that we release every six months—and that, coincidentally, I understand we will be releasing this very day under separate cover—doesn't answer these questions in any meaningful way. I wonder how much investment our failure to develop high-quality broadband statistics has prevented. We will never know.

Equally important, the lack of high-quality broadband data has also been a huge impediment to formulating good policy. It affects the FCC, Congress, and all the other branches of government that have responsibility for the supply- and/or demand-side of the broadband equation. Surely by now—by 2008—we should be able to calculate the value proposition of American broadband—price per bit—and compare it to other countries, including those that have pursued more aggressive unbundling and/or national infrastructure approaches to building broadband. That would give us enormously important feedback on our own regulatory policies. Surely by now, we should be able to understand how demographic variables like income, race, gender, age and so forth are related to broadband adoption and availability. But we don't because of the indefensible way we have gone about gathering data—and still

gather it today.

The good news—and, yes, today’s *Order* is very good news—is that it shows we’re finally getting serious about broadband data-gathering. I am very grateful that Chairman Martin and my colleagues have been willing to work with me on this issue which has always been near and dear to my heart. To be sure, it is likely to be a year or more before the FCC actually gets the data that we specify today, and that is a time period when we still won’t know what we need to know to make the kind of broadband progress we need to make. But when we *do* get this data, we will finally have granular information on the number of connections, in various upload and download tiers, for each census tract. We also ask new questions that distinguish between different types of wireless services—separating out those that allow access to the full Internet from those that offer only access to content selected by the carrier or that has been optimized for mobile phones. And, also important, today’s item recognizes that it is flat-out wrong (and in fact it has been wrong for many years) to call 200kpbs service “broadband.” What is more, the item recognizes, correctly, that broadband must be an evolving definition—and I will certainly be pushing hard to make sure that the Commission continues to evolve on this issue.

All told, these are important advances and I appreciate the willingness of my colleagues to require this level of granularity and specificity. I am confident that this new information will pay serious dividends. For example, with our new Form 477, we will finally learn what range of choices individual consumers face in high- and low-income, urban and rural areas. We will get a much better sense of how many Americans have no broadband option at all, and we will learn how broadband adoption rates vary along with demographic variables. And with this information in mind, we can finally start making more thoughtful and effective choices about where to focus our attention when it comes to encouraging new broadband investment.

Today’s *Order* also makes an important tentative conclusion (followed by a commitment to reach the rules stage within 4 months) that the FCC will collect information on broadband availability at the address level by using the many disparate databases developed by commercial providers to estimate where their broadband services are available. The distinction between availability and adoption is critical and has been highlighted for us by the GAO. Compared to the alternative— gathering geographic information on every network asset owned by every carrier in the country and then reinventing the wheel by transforming this information into address-by-address availability—using publicly-available databases is a win-win for the FCC and for industry. It will lead to a more accurate estimate of broadband availability and a reduced reporting burden for carriers.

Despite the many strides that today’s *Order* makes and my approval of many of these initiatives, in two parts I must limit myself to concurrence. First, I believe it is a mistake to defer action on gathering price information to a further notice of proposed rulemaking. Price is essential to understanding the value proposition that is available to American consumers—our continued unwillingness to gather this critical information reduces the value of our broadband data reports. Value—the price per bit—after all, is broadband’s killer application, and if we don’t understand what kind of value broadband is bringing into people’s homes and offices, we can’t really understand where we are and what remains to be done.

Second, I think it is a mistake not to require carriers to distinguish between business and residential broadband connections. The fact that many businesses in the Washington D.C. area subscribe to very expensive high-speed connections in the 100 megabit, 1 gigabit or faster range should not be conflated with the often far slower connections available to residential consumers.

All in all, today’s item comes much later than I would have preferred—but it is a strong step forward and I look forward to seeing the data it produces and using that data to help us get value-laden broadband deployed to all our citizens. Thanks to my colleagues for their work in improving this item

and to the Bureau for its hard work in drafting it.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, CONCURRING IN PART**

Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, WC Docket No. 07-38.

I have long stated that we need to collect more accurate and reliable data concerning the status of broadband deployment, availability, affordability, and competition, if we are to develop effective policies that promote access to broadband services, which is our charge under the Telecommunications Act of 1996. It is the first step toward a real national broadband strategy. So, while I believe there are still gaps to fill, I am pleased that this Order makes a number of important improvements in our data gathering efforts which should assist policymakers at all levels of government. With the benefit of this additional data, the contours of the broadband challenge should become clearer, if still short of high definition.

As I have repeatedly noted, current Commission practices fall far short. Two years ago, the Government Accountability Office (GAO) criticized the Commission's ability to analyze who is getting broadband and where it is deployed, observing that the FCC's data "may not provide a highly accurate depiction of deployment of broadband infrastructures for residential service, especially in rural areas."

These well documented short-comings have hamstrung our ability to collect the data necessary for sound policymaking – a practice that continues through our adoption today of the most recent Section 706 Report on deployment of advanced services, which is again based on those old, flawed data collection methods. Recognizing the need for the Commission to improve its data collection practices, Congressional leaders in both the House and Senate have introduced legislation to enhance the information available to policymakers.

While improvements have been a long time coming, I am pleased at the steps we take here, which represent a marked improvement from our past efforts. I am particularly pleased with the Commission's decision to develop a more granular understanding of broadband subscribership by collecting data by speed tier at Census-based levels. This data should also give the Commission a greater ability to correlate subscribership with the demographic information collected by the Census Department, including household income, race, urbanicity, age, gender, and other factors that may be relevant to broadband adoption. Could this effort be further improved? I believe the usefulness of this data would have been greatly enhanced were we to distinguish between business and residential users. I also remain concerned about our visibility into developments in rural areas. Yet, this Order represents a welcome improvement.

I am disappointed that we fail to take affirmative steps to improve our understanding of broadband affordability. To maintain our productivity edge, we must give our citizens communications tools that are equal or greater than those available to our global competitors. Particularly given the growing evidence that citizens of other countries are getting a much greater broadband value, in terms of price per megabit, it is regrettable that the Commission misses an opportunity to collect useful information about the actual prices available to American consumers. In addition, particularly as availability increases, affordability is likely to be an increasingly important factor influencing broadband adoption. I hope that the Commission can take up these issues, relegated to a Further Notice in this item, in the near future.

Among the commendable steps here is our recommendation to the Census Bureau that a question regarding broadband adoption should be added to the American Community Survey and the Puerto Rico Community Survey. While the ultimate decision rests with the Census Bureau, I believe this issue warrants inclusion given the increasing importance of broadband to virtually every aspect of the way we live our lives.

The Commission also adopts new “speed categories” of broadband for reporting purposes. I am pleased that the Commission finally moves away from its antiquated definition of broadband as 200 kbps per second, which had become something of a running joke. Recognizing that the definition of broadband must evolve as technology evolves is a good first step, although the practical implications of these new categories are less clear.

We also make improvements on the important issue of upload speeds. As consumers and businesses become increasingly empowered as creators of content, services, and applications, it is important that the Commission gather information about what services are available and adopted. The Commission’s new broadband reporting categories would have been improved were they to contain a component of upload speed, but I am pleased that the Commission will at least collect new data on this issue at a more granular level.

I note also that the Commission’s ability to gather and map useful information regarding broadband availability remains somewhat in limbo with these issues pushed to a Further Notice. I do appreciate the Commission’s willingness to seek comment on a proposal to collect the underlying data about broadband availability that providers already make available to the public.

Finally, I would like to thank the Chairman and my fellow Commissioners for tackling this important and complex subject. Many thanks also to the staff of the Wireline Competition Bureau for their efforts to develop this item and for their hard work collecting and analyzing this data on an on-going basis. As I have often stated, having a comprehensive, reliable, and accurate understanding about the state of broadband deployment is the critical first step in a comprehensive effort to promote the availability of broadband services to all Americans. I am hopeful that the changes adopted here will enhance the ability of the Commission and Congress to understand the availability of affordable broadband and to target policy efforts accordingly. For all these reasons, I approve in part, concur in part.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data, WC Docket No. 07-38.

Broadband deployment to all Americans should be one of our top priorities, and improving our data collection is logically a good first step.

I welcome our efforts to improve our data collection, thereby creating the opportunity for the improved empirical analysis of broadband services and policy. We need to make sure we collect relevant data. The primary goal of improving our data collection ability is to better measure the availability of broadband services across the U.S. so that we can make better-informed policymaking decisions.

Our current ZIP code data provides us with trend information, but as the broadband market has evolved we now want to provide a more complete picture. For the broadband data collection effort to be complete, we need more granular data collection as provided by the rules we adopt today.

Dozens of States have taken on or are exploring the task themselves, particularly through public-private partnerships. My own home State of Tennessee has initiated such an effort. It is important that the Commission not hamper or undermine these initiatives that are being undertaken by State and local governments.

While I fully recognize and support the need for the Commission to continue to update the evolving speeds and definitions of broadband as the marketplace develops, we must also be cognizant of any unintended consequences to programs that rely on our current definitions. To insure that everyone- even those with lower speeds or older technologies- is counted, and also to insure that by adopting new definitions today we do not disrupt any of the funding opportunities- whether through the FCC, the Department of Agriculture, Department of Commerce, Department of Health and Human Services, Department of Education, Appalachian Regional Commission, or even State grants- I would have preferred to move this to the Further Notice so that we could be certain these definitional changes are only for the positive. Thus I concur in this section of the Order.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, DISSENTING IN PART**

Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data, WC Docket No. 07-38.

Today, we take steps to update and refine the Commission's efforts to determine the current state of broadband deployment in the U.S. It is imperative that we continually improve and sharpen our data collection efforts through revisions in the Form 477 to reflect technological advances in the marketplace. As I stated earlier, the Commission should take great care to seek accurate and complete information that it needs to have an accurate picture of the current state of broadband deployment. We must always keep foremost in mind the objective of this data collection effort—to provide a basis for sound policies that foster broadband deployment for all Americans. What we should avoid is imposing data reporting requirements on all providers that may be unduly burdensome or which may put one provider at a competitive advantage. In those instances where initiatives are undertaken by providers in the marketplace or by public-private entities, the federal government should not stand in their way.

On a positive note, we are revising the form to seek broadband deployment data on a Census Tract basis and at more specific upload and download speeds. This should provide more complete and useful information about the current state of broadband availability. It should also provide a useful tool to expand advanced telecommunications services to those areas that are underserved.

But unfortunately, today the majority is playing with fire by attaching subjective and, perhaps, misleading terminology and definitions to various speeds. In short, what started out with a sleepy bureaucratic Order may end up being a change of tectonic proportions. The majority has not thought through the unintended consequences of its actions today. Instead of allowing consumers to determine what is a sufficient speed for their desired purposes, the government is drawing an arbitrary line that may favor some technologies that are currently considered "broadband." While the concept of what is "broadband" should constantly improve and evolve, these decisions are best left to consumers and the marketplace, not unelected bureaucrats. It certainly should not be a political decision. I fear that what the majority has wrought this morning may very well come back to haunt us. Accordingly, I respectfully dissent from this portion of the item.

Fortunately we have a Further Notice where we seek comment on adoption of a national broadband availability mapping program. Already, public-private partnerships, such as ConnectKentucky and Connected Nation, are underway that use helpful mapping methodologies on a statewide basis and have been exceedingly successful. There may be differences in the approach taken by these entities that cannot be easily replicated by the federal government. I look forward to reviewing the comments on this important issue before we consider whether to adopt a national broadband mapping program.

On the other hand, the majority adopts a separate reporting category for mobile service providers to delineate the number of subscribers whose devices and subscription permit them to access Internet content of their choice, and "to exclude subscribers whose choice of content is restricted to only customized-for-mobile content, and to exclude subscribers whose subscription does not include. . . a data plan providing the ability to transfer . . . either a specified or an unlimited amount of data to and from Internet sites of the subscriber's choice." Wireless broadband Internet access service holds great potential to bring service to customers throughout America. We should be encouraging these offerings and

recognize that they will maximize innovation and consumer benefits as wireless services continue to flourish and evolve. By excluding them, we are penalizing wireless consumers who have not purchased data plans. In addition, consumers who use wireless devices to access broadband do not expect their experience to duplicate the wired, desktop experience of broadband access. Those wireless offerings should be included in our statistics that reflect broadband deployment.

For these reasons, I also dissent to this part of the order.