

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58

**REPORT AND ORDER**

**Adopted: July 6, 2017**

**Released: July 7, 2017**

By the Commission:

1. In this Report and Order, by eliminating several rules that are either duplicative of other reporting requirements or are simply no longer necessary, we streamline the annual reporting requirements for eligible telecommunications carriers (ETCs) that receive high-cost universal service support. We also re-emphasize the importance of providing the public with access to non-confidential information filed by ETCs, and we direct the Universal Service Administrative Company (USAC) to work closely with state and Tribal governments and other stakeholders to improve public access to the information that ETCs will continue to file. In doing so, we reduce ETCs' regulatory burdens while strengthening the tools for program oversight in furtherance of our goal of protecting the high cost universal support program against waste, fraud, and abuse.

2. *Background.* In the *Rate-of-Return Reform FNPRM*, we proposed to modify or eliminate several ETC reporting obligations in order to reduce unnecessary regulatory reporting burdens on ETCs, particularly those that are small businesses.<sup>1</sup> Specifically, we sought comment on modifying or eliminating ETCs' obligations to report (1) network outage information; (2) unfulfilled service requests; (3) the number of complaints received by an ETC per 1,000 subscribers for both voice and broadband services; and (4) pricing for voice and broadband services. We also sought comment on eliminating the requirements that ETCs certify compliance with applicable service quality standards and that they file duplicate copies of Form 481 with the FCC, and with states, and/or Tribal governments.<sup>2</sup>

3. *Discussion.* Based on the record before us, we find that we can eliminate all elements of the Commission's annual high-cost reporting rules on which we sought comment without compromising our ability to monitor whether ETCs are using high-cost universal service support for its intended purpose.<sup>3</sup> We agree with the vast majority of commenters that note "reporting obligations should be

<sup>1</sup> See *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3229, paras. 387-393 (2016) (*Rate-of-Return Reform Order and/or FNPRM*).

<sup>2</sup> See *Rate-of-Return FNPRM*, 31 FCC Rcd at 3229, paras. 388-391. See also 47 CFR § 54.313(a)(2) (outage reporting); 47 CFR § 54.313(a)(3) (unfulfilled service requests); 47 CFR § 54.313(a)(4) (consumer complaints); 47 CFR § 54.313(a)(7) (pricing); 47 CFR § 54.313(a)(5) (service quality standards).

<sup>3</sup> At this time we only act on the high-cost reporting rules in section 54.313 and not the Lifeline-specific reporting rules in section 54.422.

effectively and efficiently tailored to monitoring ETCs' modified service obligations."<sup>4</sup> At the same time, we reiterate the importance of providing access to non-confidential information to the public and to states, U.S. Territories, and Tribal governments.

4. *Network outage reporting.* First, because the Commission's Network Outage Reporting System (NORS) already collects detailed outage information, and does so in a more timely fashion than the FCC Form 481,<sup>5</sup> we eliminate the rule requiring that ETCs' annual reports include detailed information about any outages affecting voice service for at least 30 minutes that they have experienced in the prior calendar year.<sup>6</sup> Moreover, given the sensitive nature of this data to both national security and commercial competitiveness, most ETCs seek confidential treatment of their outage reporting. Centralizing our collection of outage information in NORS will reduce the burden on ETCs of filing multiple requests for confidential treatment for the same information. It will also allow USAC to make more of an ETC's Form 481 data publicly available.

5. Most commenters support eliminating this duplicative requirement.<sup>7</sup> We disagree with those commenters that suggest that reporting this information imposes no additional costs on carriers.<sup>8</sup> Even if a carrier has information on outages readily available, preparing and submitting duplicative documentation entails costs. We also disagree with suggestions that, because some states have deregulated telecommunications services in their states, we should retain certain federal reporting requirements.<sup>9</sup> Because carriers already have a federal obligation to file this information through NORS, we find it inappropriate to continue to require carriers to incur additional costs solely to provide states with this information directly where we have determined it is unnecessary for our own high-cost universal service oversight. To the extent that state agencies want network outage information for their own purposes, they can, and some do, obtain such information through their own mechanisms.<sup>10</sup>

6. *Unfulfilled service requests.* Second, we eliminate the requirement that ETCs report the number of service requests they receive but do not fulfill.<sup>11</sup> The underlying purpose of this rule when

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<sup>4</sup> See, e.g., United States Telecom Association Comments at 5 (USTelecom Comments). See also Alexicon Telecommunications Consulting Comments at 12-13 (Alexicon Comments); ITTA-The Voice of Mid-Size Communications Companies Comments at 5 (ITTA Comments); NTCA-The Rural Broadband Association Comments at 39-40 (NTCA Comments); TCA, Inc.-Telcom Consulting Associates Comments at 9-10 (TCA Comments); Windstream Corporation Comments at 2 (Windstream Comments); WTA-Advocates for Rural Broadband Comments at 19-20 (WTA Comments); GVNW Consulting, Inc. Reply at 7-8 (GVNW Reply); NTCA-The Rural Broadband Association Reply at 16 (NTCA Reply); TCA, Inc.-Telcom Consulting Associates Reply at 5-6 (TCA Reply).

<sup>5</sup> See 47 CFR pt. 4.

<sup>6</sup> See 47 CFR § 54.313(a)(2). The Bureau never sought PRA approval for reporting broadband outages. See *Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Report and Order, 27 FCC Rcd 2650 (2012) (deferring action on possible performance degradation thresholds for measuring an outage of broadband Internet service).

<sup>7</sup> See Alexicon Comments at 12-13; ITTA Comments at 5; NTCA Comments at 39-40; TCA Comments at 9-10 (TCA Comments); USTelecom Comments at 5-7; Windstream Comments at 2; WTA Comments at 19-20; GVNW Reply at 7-8; NTCA Reply at 16; TCA Reply at 5-6.

<sup>8</sup> See Michigan Public Service Commission Reply at 2 (Michigan Reply).

<sup>9</sup> See Public Service Commission of the State of Missouri Comments at 3 (Missouri Comments); Michigan Reply at 4.

<sup>10</sup> See, e.g., 16 Tex. Admin. Code § 26.51(e) (2017) (Texas state telecommunications outage reporting requirements); 52 Pa. Code § 67.1 (2017) (Pennsylvania state telecommunications outage reporting requirements).

<sup>11</sup> See 47 CFR § 54.313(a)(3).

adopted was to allow the Commission to monitor rate-of-return carriers' progress in deploying broadband pursuant to the reasonable request standard.<sup>12</sup> Based on our implementation, however, we find that the rule as written is not appropriately tailored to further the goal. Absent uniform and clear standards for how individual carriers evaluate such requests, the data reported cannot support any meaningful evaluation. In the *Rate-of-Return Reform Order*, the Commission replaced the reasonable request standard, the primary reason the Commission originally adopted this reporting requirement, with defined broadband obligations.<sup>13</sup> Thus, now most high-cost recipients – particularly rate-of-return carriers regardless of whether they elected to receive model-based support or remain on the reformed support mechanisms – have specific broadband deployment obligations that we will be able to monitor through their annual submission of information about the exact locations to which they built in the prior calendar year.<sup>14</sup> Even if the Commission provided ETCs with additional guidance, this objective metric is a more efficient way to measure compliance than reporting unfulfilled requests, which requires a subjective determination as to whether to include the data. We therefore eliminate this specific reporting requirement for all ETCs.

7. Most commenters support this outcome.<sup>15</sup> As with the other reporting requirements we are eliminating, and for the same reasons, we disagree with those commenters that argue that reporting this information imposes no additional costs and that the Commission should continue collecting this information for the use of state commissions.<sup>16</sup> In the *Rate-of-Return Reform Order*, the Commission directed USAC to provide the public access to ETCs' non-confidential location information and develop an online map that will enable the public to visualize service availability.<sup>17</sup> Because we believe the information USAC will make available online will be more useful to the public and equally useful to state commissions, we also decline to modify the requirement, as one commenter suggests.<sup>18</sup>

8. *Complaint reporting.* Third, we eliminate the obligation that ETCs annually report the number of complaints per 1,000 subscribers for voice and broadband services.<sup>19</sup> Consumers who have complaints about ETCs can file complaints with our Consumer and Governmental Affairs Bureau (CGB) or with states. CGB collects detailed information from each complainant, including the location and nature of the complaint.<sup>20</sup> Our experience to date is that the high-level complaint data currently collected on Form 481 is not as useful as the detailed data already collected by CGB through the complaint process, in part because the Form 481 data do not currently contain information about individual complaints. We therefore eliminate this reporting requirement and direct the Wireline Competition Bureau (WCB) to consult with CGB to ensure that we collect the necessary complaint data to adequately measure the performance of carriers receiving universal service funding.

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<sup>12</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17741, para. 208, 17852, para. 580.

<sup>13</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3145-54, paras. 156-180.

<sup>14</sup> See 47 CFR § 54.316.

<sup>15</sup> See Alexicon Comments at 12-13; ITTA Comments at 5; NTCA Comments at 40-41; TCA Comments at 9-10; USTelecom Comments at 6-7; Windstream Comments at 2; WTA Comments at 19-20; GVNW Reply at 7-8; NTCA Reply at 16; TCA Reply at 5-6.

<sup>16</sup> See Public Service Commission of the State of Missouri Comments at 3 (Missouri Comments); Michigan Reply at 4.

<sup>17</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3168, para. 221.

<sup>18</sup> See Missouri Comments at 4-5.

<sup>19</sup> See 47 CFR § 54.313(a)(4).

<sup>20</sup> See FCC, Consumer Complaint Data Center, <https://www.fcc.gov/consumer-help-center-data>.

9. Most commenters support elimination of this duplicative requirement.<sup>21</sup> Again, we disagree with commenters who argue that reporting this information entails no additional costs, and that the Commission should continue collecting this information for the use of state commissions.<sup>22</sup> One commenter expresses support for clarifying terms to make the information more useful;<sup>23</sup> however, we find that our existing collection of detailed information from consumer complaints filed with CGB is sufficient for our oversight purposes.

10. *Pricing information.* Fourth, we eliminate the obligation of ETCs to report annually information regarding the pricing of their voice and broadband service offerings.<sup>24</sup> As implemented in FCC Form 481, ETCs are required to submit information regarding their voice rates as of January 1 of each year, and separately list rates for each wire center to the extent the rates vary, as well as indicate whether service is provided on a flat rate, measured or metered basis. For broadband offerings, ETCs must separately list each service offering that meets or exceeds the Commission's minimum requirements and, if they do not have uniform rates across the study area, report each rate for individual exchanges. The net result is a detailed worksheet with multiple rates listed for each wire center.

11. As a practical matter, we have not made sufficient use of this pricing data to support its continued collection. We primarily rely on the urban rate survey to develop annually the reasonable comparability benchmarks for both voice and broadband services, and annual certifications from providers that their rates do not exceed those benchmarks.<sup>25</sup> We therefore conclude that the public interest would be served by discontinuing this particular information collection.

12. Most commenters support removing this reporting requirement.<sup>26</sup> We disagree again with commenters arguing that reporting this information requires no additional costs, and that the Commission should continue collecting this information for the use of state commissions.<sup>27</sup> One commenter suggests that carriers only report what is needed to show compliance with the "reasonable comparability" benchmark;<sup>28</sup> as noted above, we find that we already require submission of what is needed to show compliance with that benchmark through the urban rate survey and annual certifications.

13. *Service quality certification.* Fifth, we eliminate the requirement that an ETC certify its compliance with applicable service quality standards and consumer protection rules.<sup>29</sup> Given that ETCs have an independent obligation to comply with all applicable service quality standards and consumer protection rules, we find that this certification is unnecessary for our oversight of ETCs. Any failure to comply with rules and requirements can be pursued regardless of whether a certification of compliance with those rules has been made. Both the Commission and USAC already have sufficient authority to investigate, audit, and pursue recovery of high-cost support for violation of program rules.<sup>30</sup>

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<sup>21</sup> See Alexicon Comments at 12-13; ITTA Comments at 5; TCA Comments at 9-10; USTelecom Comments at 6-7; Windstream Comments at 2; WTA Comments at 19-20; GVNW Reply at 7-8; NTCA Reply at 16; TCA Reply at 5-6.

<sup>22</sup> See Missouri Comments at 4-5.

<sup>23</sup> See NTCA Comments at 41-42.

<sup>24</sup> See 47 CFR § 54.313(a)(7).

<sup>25</sup> 47 CFR §§ 54.313(a)(10), (12) (2016).

<sup>26</sup> See Alexicon Comments at 12-13; ITTA Comments at 5; TCA Comments at 9-10; USTelecom Comments at 7; Windstream Comments at 2; WTA Comments at 19-20; GVNW Reply at 7-8.

<sup>27</sup> See Missouri Comments at 4-5.

<sup>28</sup> See NTCA Comments at 42.

<sup>29</sup> See 47 CFR §§ 54.313(a)(5), 54.422(b)(3).

<sup>30</sup> See, e.g., 47 CFR § 54.707 (Audit Controls).

14. Commenters generally support eliminating this requirement.<sup>31</sup> For the same reasons as stated above, we again disagree with commenters suggesting that providing this certification would not entail any additional costs, and that the Commission should continue collecting these certifications for states' own oversight purposes.<sup>32</sup>

15. *Filing of duplicate FCC Forms 481.* Finally, contingent upon USAC's completion of the rollout of an online portal for recipients of high cost services, we will no longer require ETCs to file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments beginning in 2018. In the *Rate-of-Return Reform Order*, the Commission directed USAC to "timely publish through electronic means all non-confidential high-cost data in open, standardized, electronic formats, consistent with the principles of the Office of Management and Budget's Open Data Policy," and directed WCB "to work with USAC to put appropriate protections in place for ETCs to seek confidential treatment of a limited subset of the information. Entities, such as states and Tribal governments, which already have access to confidentially filed information for ETCs[] within their jurisdiction, will continue to have access to such information through the online database."<sup>33</sup> If USAC completes the rollout of its online portal after the 2018 Form 481 filing date, we will no longer require ETCs to file duplicate copies of Form 481 beginning in 2019. We conclude that centralizing all filing requirements with USAC would benefit state and Tribal governments by reducing the need to sort through, in some cases, dozens of paper documents containing the same information as what will be available more readily through an online tool. We reiterate to USAC the importance of working closely with state and Tribal governments and other stakeholders to provide the public with easy access to non-confidential data filed by ETCs.

16. Only two states and no Tribal governments raised concerns regarding this proposal.<sup>34</sup> Those commenters argue that it would be burdensome for states to actively seek ETCs' reported information from USAC.<sup>35</sup> As others note, it is likely less burdensome for a state commission to log onto USAC's system and access carriers' reports than for ETCs, especially small companies, to submit their reports to the commissions in states in which they operate.<sup>36</sup> Nonetheless, in light of state commenters' concerns, we direct USAC to work with states and Tribal governments to facilitate their access to carriers' submitted data. Other commenters generally express support for removing the duplicate filing requirement,<sup>37</sup> although several commenters expressed some concern about access to ETCs' confidential data provided through USAC's new online system.<sup>38</sup> However, as we explained in the *Rate-of-Return Reform Order*, "[e]ntities, such as states and Tribal governments, which already have access to confidentially filed information for ETCs[] within their jurisdiction, will continue to have access to such information through the online database"; entities without such access will not newly gain access to

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<sup>31</sup> See Alexicon Comments at 12-13; ITTA Comments at 5; TCA Comments at 9-10; USTelecom Comments at 7; Windstream Comments at 2; WTA Comments at 19-20; GVNW Reply at 7-8.

<sup>32</sup> See Missouri Comments at 4-5.

<sup>33</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3168-69, paras. 221-222

<sup>34</sup> See Missouri Comments at 1, 5; Michigan Reply at 5-6.

<sup>35</sup> See Missouri Comments at 1, 5; Michigan Reply at 5-6.

<sup>36</sup> See NTCA Reply at 16-17.

<sup>37</sup> See Alexicon Comments at 12-13; ITTA Comments at 5; NTCA Comments at 42-43; TCA Comments at 10; USTelecom Comments at 8-9; Windstream Comments at 3; WTA Comments at 19-20; GVNW Reply at 7-8. See also Letter of James J. Kalil, Executive Committee Member, Small Company Coalition, to Commissioner Michael O'Rielly, WC Docket No. 10-90 (filed June 1, 2015) (urging the Commission to allow data sharing between agencies and eliminate the requirement to send copies of filings to multiple agencies).

<sup>38</sup> See USTelecom Comments at 8-9; Windstream Comments at 3; WTA Comments at 19-20; GVNW Reply at 7-8; NTCA Reply 17-19; TCA Reply at 5-6.

confidential information.<sup>39</sup> In light of those commenters' concerns, we reiterate our direction to USAC to ensure appropriate protections for ETCs seeking confidential treatment of specific information, pursuant to Section 0.459 of the Commission's rules, and to make public the non-confidential data it receives.<sup>40</sup> USAC's publishing of non-confidential data will improve the public's access to the data without compromising the confidentiality of sensitive information.

17. At this time, we decline to eliminate any other ETC reporting requirements.<sup>41</sup> Other information we require ETCs to report is necessary to enable us to fulfill our oversight responsibilities and to protect against waste, fraud, and abuse. Notwithstanding, we will continue to evaluate our reporting requirements to identify other requirements that we may be able to streamline or eliminate at a future point.<sup>42</sup>

18. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, that this Report and Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except that modifications to Paperwork Reduction Act burdens shall become effective immediately upon announcement in the Federal Register of OMB approval.

19. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 CFR Part 54 IS AMENDED as set forth in Appendix A, and such rule amendments SHALL BE EFFECTIVE immediately upon announcement in the Federal Register of OMB approval.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary  
Federal Communications Commission

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<sup>39</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3168-69, para. 222.

<sup>40</sup> See *id.*; *Connect America Fund et al.*, Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14554-56, paras. 15-17 (2012). See also 47 CFR § 0.459(a)(4).

<sup>41</sup> See, e.g., USTelecom Comments at 7-8 (suggesting that the Tribal engagement rule requires "significant revision"); Small Company Coalition Reply Comments at 2 (SCC Reply) (suggesting further consolidation of various certifications and regulatory filings).

<sup>42</sup> See ITTA Comments at 5 (expressing support for "an ongoing review of whether to streamline and eliminate other requirements that are no longer necessary given action by the Commission or current market conditions"); SCC Reply at 2 (asking "the FCC to conduct an internal review of its various regulatory filings and certifications to determine their efficacy and consider eliminating or streamlining any filing and/or certification that may no longer be relevant or necessary in light of the ever-growing competitive marketplace").

## APPENDIX A

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

1. Revise paragraph (a) of § 54.313 to read as follows:

**§54.313 Annual reporting requirements for high-cost recipients.**

- (a) Any recipient of high-cost support shall provide the following:
  - (1) Certification that the carrier is able to function in emergency situations as set forth in §54.202(a)(2);
  - (2) A certification that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau;
  - (3) A certification that the pricing of a service that meets the Commission's broadband public interest obligations is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support;
  - (4) The recipient's holding company, operating companies, affiliates, and any branding (a “dba,” or “doing-business-as company” or brand designation), as well as universal service identifiers for each such entity by Study Area Codes, as that term is used by the Administrator. For purposes of this paragraph, “affiliates” has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended;
  - (5) To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:
    - (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
    - (ii) Feasibility and sustainability planning;
    - (iii) Marketing services in a culturally sensitive manner;
    - (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
    - (v) Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or

services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

- (6) The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology.

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**APPENDIX B****Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980 (RFA)<sup>1</sup> as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in March 2016 (*Rate-of-Return Reform FNPRM*).<sup>2</sup> The Commission sought written public comment on the proposals in the *Rate-of-Return Reform FNPRM*, including comment on the IRFA. The Commission did not receive any relevant comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objective of, the Report and Order**

2. In this Report and Order, we streamline the annual reporting requirements for eligible telecommunications carriers (ETCs) that receive high-cost universal service support by eliminating several rules that are either duplicative of other reporting requirements or are simply no longer necessary. We also reinforce the importance of providing the public with access to non-confidential information filed by ETCs and direct the Universal Service Administrative Company (USAC) to work closely with state and Tribal governments and other stakeholders to improve public access to the information that ETCs will continue to file. In doing so, we reduce ETCs' regulatory burden while strengthening the tools for program oversight in furtherance of our goal of protecting the high cost universal support program against waste, fraud, and abuse.

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

3. There were no comments raised that specifically addressed the proposed updating of the ETC reporting requirements as presented in the *Rate-of-Return Reform FNPRM* IRFA.<sup>4</sup> Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

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

4. Pursuant to the Small Business Jobs Act of 2010,<sup>5</sup> which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Inter-carrier Compensation Regime*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3257-85 (2016) (*Rate-of-Return Reform Order and/or FNPRM*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See *Rate-of-Return FNPRM*, 31 FCC Rcd at 3260, para. 15.

<sup>5</sup> 5 U.S.C. § 604(a)(3).

#### D. Description and Estimate of the Number of Small Entities to Which the Rules Would 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 proposed rules adopted herein.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>8</sup> A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>9</sup>

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>10</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>11</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>12</sup> Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>13</sup> Nationwide, as of 2007, there were approximately 1,621,215 small organizations.<sup>14</sup> Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.<sup>16</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>17</sup> Thus, we estimate that most governmental jurisdictions are small.

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<sup>6</sup> See *id.* § 603(b)(3).

<sup>7</sup> See *id.* § 601(6).

<sup>8</sup> See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>9</sup> See *id.* § 632.

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

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

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

<sup>13</sup> 5 U.S.C. § 601(4).

<sup>14</sup> INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

<sup>15</sup> 5 U.S.C. § 601(5).

<sup>16</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2012 at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

<sup>17</sup> The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government

(continued...)

7. *Broadband Internet Access Service Providers.* The rules adopted in the Report and Order apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,<sup>18</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>19</sup> These are also labeled "broadband." The latter are within the category of All Other Telecommunications,<sup>20</sup> which has a size standard of annual receipts of \$32.5 million or less.<sup>21</sup> These are labeled non-broadband. Census data for 2012 shows that there were 3,117 firms in the first category that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>22</sup> For the second category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>23</sup> Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

8. The broadband Internet access service provider industry has changed since this definition was introduced. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Final Regulatory Flexibility Analysis.

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."<sup>24</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies

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organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, City and Town Totals Vintage: 2011, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

<sup>18</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search>.

<sup>19</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>20</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517919 All Other Telecommunications," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search>.

<sup>21</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>22</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>23</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

<sup>24</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

having 1,500 or fewer employees.<sup>25</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>26</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 9 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>28</sup> The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

11. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 9 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup> According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>31</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>32</sup>

12. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 9 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>33</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>34</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that

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

<sup>26</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>27</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>28</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>29</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>30</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>31</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

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

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

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

they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>35</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>36</sup> Of this total, 70 have 1,500 or fewer employees.<sup>37</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

13. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 9 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>38</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>39</sup> Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>40</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the adopted rules.

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 NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Mobile virtual networks operators (MVNOs) are included in this industry.<sup>41</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>42</sup> U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>43</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>44</sup> All 193 carriers have 1,500 or fewer employees.<sup>45</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the adopted rules.

15. *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.<sup>46</sup> Census data for 2012 show that 1,341 firms provided resale services during that year.

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

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

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

<sup>38</sup> 13 CFR § 121.201, NAICS code 517110.

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

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

<sup>41</sup> <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>42</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>43</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>44</sup> *See Trends in Telephone Service*, at tbl. 5.3.

<sup>45</sup> *Id.*

<sup>46</sup> 13 CFR § 121.201, NAICS code 517911.

Of that number, 1,341 operated with fewer than 1,000 employees.<sup>47</sup> Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>48</sup> Of this total, an estimated 211 have 1,500 or fewer employees.<sup>49</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by adopted rules.

16. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and 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.<sup>50</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>51</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>52</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>53</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the adopted rules.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 9 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>54</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>55</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>56</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>57</sup> Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our adopted rules are small.

18. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>58</sup> The appropriate size standard under SBA rules is that such a business is small

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

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

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

<sup>50</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>51</sup> *Id.*

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

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

<sup>54</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>55</sup> [http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>56</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>57</sup> *Id.*

<sup>58</sup> NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.<sup>59</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>60</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>61</sup> Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

19. *Cable and other Subscription Programming.*<sup>62</sup> This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>63</sup> The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.<sup>64</sup> The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees.<sup>65</sup> Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

20. *Cable Companies and Systems.* The Commission has developed its own small business

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<sup>59</sup>[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>60</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>61</sup> *Id.*

<sup>62</sup> In 2014, “Cable and Other Subscription Programming,” NAICS Code 515210, replaced a prior category, now obsolete, which was called “Cable and Other Program Distribution.” Cable and Other Program Distribution, prior to 2014, were placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between “Cable and Other Subscription Programming” and “Cable and other Program Distribution,” we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of \$38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of the *FY 2015 NPRM*. Second, the data available under the size standard of \$38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscription Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operatin6 in this category in 2012. Hence the data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of \$38.5 million or less. *See* [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51I2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51I2&prodType=table).

<sup>63</sup> <https://www.census.gov/agi-bin/ssd/naics/naicsrch>.

<sup>64</sup> 13 CFR 121.201, 20116 NAICSs Code 515210.

<sup>65</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>66</sup> Industry data shows that there were currently 660 cable operators.<sup>67</sup> Of this total, all but ten cable operators nationwide are small under this size standard.<sup>68</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>69</sup> Current Commission records show 4,421 cable systems nationwide.<sup>70</sup> Of this total, 3,936 cable systems have less than 20,000 subscribers, and 485 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

21. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.<sup>71</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>72</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>73</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>74</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. *All Other Telecommunications*. "All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of

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<sup>66</sup> 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 Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

<sup>67</sup> NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited Oct. 20, 2016). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, para. 24 (2013) ("15<sup>th</sup> Annual Competition Report").

<sup>68</sup> See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

<sup>69</sup> 47 C.F.R. § 76.901(c).

<sup>70</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Oct. 20, 2016. A cable system is a physical system integrated to a principal headend.

<sup>71</sup> See SNL KAGAN at [www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx](http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx).

<sup>72</sup> 47.901(f) and notes ff. 1, 2, and 3.

<sup>73</sup> See SNL KAGAN at [www.snl.com/Interactivex/TopCableMSOs.aspx](http://www.snl.com/Interactivex/TopCableMSOs.aspx).

<sup>74</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 CFR § 76.901(f).



transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>75</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>76</sup> For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million.<sup>77</sup> Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

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

23. The Report and Order does not impose any specific reporting, recordkeeping, or compliance requirements for entities, including small entities. Instead, by removing certain reporting requirements, the Report and Order streamlines existing reporting requirements. In particular, the Report and Order eliminates ETCs’ obligations to report (1) network outage information; (2) unfulfilled service requests; (3) the number of complaints received by an ETC per 1,000 subscribers for both voice and broadband services; and (4) pricing for voice and broadband services. The Report and Order also eliminates the requirement that an ETC certify its compliance with applicable service quality standards and consumer protection rules, as well as the requirement that ETCs must file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments.

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

24. 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 the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>78</sup> We have considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the *Rate-of-Return Reform FNPRM* and its IRFA, in reaching its final conclusions and taking action in this proceeding.

25. In the *Rate-of-Return Reform FNPRM*, we sought comment on whether to eliminate or modify several ETC reporting requirements.<sup>79</sup> In the Report and Order, we ultimately decline to modify any of the requirements, as some commenters suggest. Instead, as explained above, the Report and Order completely eliminates certain reporting requirements. Thus, the Report and Order does not impose any economic impact on affected entities, including small entities, but only reduces the burdens those entities face. We further note in the Report and Order that we will continue to evaluate our reporting requirements to identify other requirements that we may be able to streamline or eliminate.

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<sup>75</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>76</sup> 13 C.F.R 121.201; NAICs Code 517919.

<sup>77</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC0751SSSZ4, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, available at [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ1&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table).

<sup>78</sup> 5 U.S.C. § 603(c).

<sup>79</sup> See *Rate-of-Return Reform FNPRM*, 31 FCC Rcd at 3229-30, paras. 387-393.

**G. Report to Congress**

26. The Commission will send a copy of the Report and Order and Order on Reconsideration, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>80</sup> In addition, the Commission will send a copy of the Report and Order and Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and Order on Reconsideration and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>81</sup>

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<sup>80</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>81</sup> *See id.* § 604(b).