CMRS providers (although some voluntarily do not recover from Lifeline customers). We seek comment on whether to extend this restriction to such carriers.

1. Universal Service Contribution Recovery Proposals

a. Carrier Flexibility

95. We seek comment on whether to continue providing carriers with flexibility in the recovery of universal service contribution-related costs, but to adopt certain modifications to address those aspects of carrier recovery practices that may be inconsistent with the requirements in sections 201(b) and 202(a) of the Act and may lead to customer confusion. We specifically invite comment on whether to require carriers that elect to recover contributions through a separate line item to make that line-item amount or percentage rate uniform for all customers. We also seek comment on requiring carriers that recover contributions through a separate line item to make "mark-up" percentages uniform across all customers and classes of customers.[248] In addition, we seek comment on establishing a uniform safe harbor line-item mark-up amount for carriers to use if they so choose. Under these proposals, carriers would retain the flexibility to recover their universal service contributions from end users either through service rates or through a line item on end-user bills.[249] Moreover, carriers still would have some flexibility in how much they may recover from customers. The proposals may help to ensure, however, that contribution recovery practices are consistent with the just and reasonable requirements in section 201 of the Act and the non-discrimination requirements of section 202 of the Act.[250]

96. Under the first proposal, if a carrier elects to recover its contributions through a separate line item on any customer bill, that carrier would be required to do so in a non-discriminatory manner by making the separate line item uniform for all customers. For example, if the Commission were to adopt a connection-based methodology for assessment, a carrier would be required to have the same line-item amount for each residential connection to a public network. Different categories of connections would be assigned different line-item amounts. Thus, under the tiered capacity approach, a Tier Three multi-line business connection would have a different line item than a Tier One multi-line business connection. Alternatively, if the Commission maintains the current revenue-based assessment system, and a carrier chooses to recover a specific percentage amount from one set of customers (for example, residential customers), it would be required to apply that same percentage to other customers (for example, business customers).

97. The proposed limitation would elaborate on obligations that common carriers already have under sections 201(b) and 202(a) of the Act not to shift more than an equitable

[248] By "mark up," we mean amounts recovered through universal service line items that are in addition to the then-applicable contribution factor. So, for example, we propose to require contributors that choose to mark-up one customer's line item 5% to mark-up all line items by 5%. As discussed in the *2001 Notice*, such mark ups typically are used to account for administrative costs and other variables. *See 2001 Notice*, 16 FCC Rcd at 9895 para. 4.

[249] We note that incumbent local exchange carriers may recover universal service contributions only through explicit, interstate end user charges. *See* 47 C.F.R. § 69.4(d). Such charges may be assessed on a per-line basis or as a percentage of interstate retail revenues, and at the option of the local exchange carrier may be combined for billing purposes with other end user retail rate elements. *See* 47 C.F.R. §§ 69.131, 69.158.

[250] *See* 47 U.S.C. §§ 201, 202; *see also Universal Service Order*, 12 FCC Rcd at 9199 para. 829, 9211 para. 855.

share of their contributions to any customer or group of customers.[251] We seek comment on whether such a recovery limitation would address commenters' concerns that certain customers or classes of customers are being charged excessively for carrier universal service contributions.[252]

98. We also seek comment on whether to require carriers to make mark-up amounts uniform across all customers and classes of customers. The uniform mark up would be a percentage amount applied by the carrier to all universal service contribution amounts that appear as line items on customer bills. Carriers could be required to report the amount of their percentage mark-up to the Commission on the current Form 499 or on the proposed new Form 499-M to document the method by which they arrive at their reported mark-up amount, and to submit such documentation, upon request, to USAC.[253] The amount of a carrier's mark-up could be reviewed on a case-by-case basis either in an audit or enforcement context. Such a requirement may respond to concerns that some carriers recover a disproportionate amount of contribution-related costs from certain customers or categories of customers.[254] We are aware of no cost justification for such recovery practices, which may be inconsistent with sections 201 and 202 of the Act. This proposal would not limit the amount of a contribution mark-up, thereby allowing carriers the flexibility to develop a line-item mark up that reflects their unique circumstances.[255] We seek comment on this proposal.

99. To assist carriers in determining the amount of their percentage line-item mark up, we also seek comment on whether to establish an interim percentage safe harbor reflecting average carrier costs incurred in the recovery of universal service contributions.[256] Under such a proposal, a mark up no greater than the interim percentage safe harbor could be treated as presumptively reasonable. As discussed above, carriers could be permitted to recover contribution-related costs through a line item in excess of the interim safe harbor amount, but would be required to document the method by which they arrive at their reported amount and submit such documentation, upon request, to USAC. Commenters also should address the appropriate methodology for calculating such a safe harbor. We seek comment, for example, on whether to base an interim safe-harbor percentage on an analysis of publicly-available data on telecommunications industry administrative costs and uncollectibles taken from Securities and Exchange Commission (SEC) filings and other public sources.

100. We also seek comment on whether it would be a violation of the Act or Commission rules for carriers to collect more from their customers than they remit to the universal service fund, and, if so, whether to prohibit carriers from recovering amounts in excess

---

[251] *See supra* paras. 89-90; *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Second Recommended Decision, 13 FCC Rcd 24744, 24771 para. 69 (Jt. Bd. 1997).

[252] *See, e.g.*, NASUCA Comments at 15.

[253] *See supra* paras. 76-82.

[254] *See* Texas OPC and CFA Comments at 6. We previously have observed, for example, that the amount of the mark up on residential customer line items often is significantly higher than the mark up on business customer line items. *See 2001 Notice*, 16 FCC Rcd at 9896 para. 5.

[255] *See* BellSouth Reply Comments at 5; IDT Reply Comments at 6; VarTec Comments at 4.

[256] *See* WorldCom Reply Comments at 27-29.

of their actual contributions, as proposed by some commenters.[257] One way of addressing this concern would be to prevent carriers from marking up their line items above the relevant contribution amount to recover administrative costs, uncollectibles, or other contribution-related costs. If, for example, we adopted an assessment amount for residential connections of $1.00 per connection, carriers would only be permitted to recover through a line item of $1.00 per residential connection.[258] Likewise, if we adopt a contribution factor of seven percent, carriers would only be permitted to have a seven-percent line item. Several commenters expressed concerns with such a limitation.[259] We seek comment on these concerns. In addition, we request comment on whether additional measures should be taken to ensure that carriers recover their contribution obligations in a fair and non-discriminatory manner. For example, we seek comment on whether to require carriers to recover universal service contributions in their rates, as proposed by some commenters.[260] We also seek comment on whether it might be appropriate to adopt recovery limitations for carriers that are dominant under our rules, while providing non-dominant carriers with continued flexibility in contribution recovery practices.[261]

b. Collect and Remit

101. We also seek comment on whether to replace the current universal service contribution methodology with a "collect and remit" system.[262] Under such a system, carriers would include a prescribed universal service contribution line-item on customer bills and would only be required to remit to USAC those contributions actually collected from end-user customers. Adoption of a collect-and-remit system would impact not only the recovery element of the universal service mechanism, but also the assessment element. Under a collect-and-remit system, if a customer fails to pay a bill, the carrier would not be required to contribute to universal service for that customer. Thus, a collect-and-remit system would relieve carriers of any risk associated with the recovery of universal service contributions.[263] Accordingly, advocates of such a system argue that it would eliminate the need to mark-up line items to reflect uncollectibles and other factors.[264] We seek comment on which carrier costs would be eliminated if a collect-and-remit system were adopted. Would such a system help to address commenters' concerns regarding the reasonableness, fairness, and transparency of the current recovery process? We also seek comment on whether, in the event that we do adopt a collect-and-remit system, it would be appropriate to continue permitting carriers to mark-up contribution

[257] *See* Ad Hoc Comments at 34-35; AOL Reply Comments at 5; CDD Reply Comments at 7.

[258] *See 2001 Notice*, 16 FCC Rcd 9892, para. 42 (the reprint of this item in the FCC Record inadvertently omitted this page. Commenters should refer to the version that is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Notices/2001/fcc01145.doc>).

[259] *See, e.g.*, ASCENT Comments at 2; BTNA Reply Comments at 5-6; CompTel Comments at 3-5; CTIA Comments at 11-12; PCIA Reply Comments at 7; USTA Reply Comments at 8.

[260] *See, e.g.*, NASUCA Comments at 9-15; Texas OPC and CFA Comments at 3-6; West Virginia Consumer Advocate Comments at 5.

[261] *See Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360, at para. 5 (rel. Dec. 20, 2001).

[262] *See, e.g., USF Coalition Ex Parte.*

[263] *See* AT&T Comments at 3-7.

[264] *See* ASCENT Comments at 2-3; AT&T Comments at 7-8; IDT Comments at 3; SBC Comments at 7-8; Sprint Comments at 10; PCIA Reply Comments at 6.

amounts recovered through line items to reflect contribution-related costs that they continue to incur.

102. There are additional issues, however, regarding a collect-and-remit system. Because a collect-and-remit system would appear to effectively shift contribution obligations from carriers to their end-user customers, it may reduce incentives for carriers to recover universal service contributions from their customers, thereby risking the overall predictability and sufficiency of the universal service fund. Unlike the current system, a provider would not be required to contribute unless the customer paid the charge on its bill. Moreover, because USAC likely would not be able to predict with complete accuracy how many assessments actually would be collected in a given period, a collect-and-remit system would create the possibility of shortfalls in the universal service fund. USAC presumably would need to establish a significant reserve fund to account for such potential shortfalls. It also is unclear how a collect-and-remit system could be implemented, for example how carriers would treat partial payment of customer bills. An additional concern is whether a shift in contribution obligations from carriers to customers may contradict section 254(d) of the Act, which seemingly places the burden of contributing on "[e]very telecommunications carrier that provides interstate telecommunications services" and not on end users.[265] We seek comment on this analysis, and ask commenters that support a collect-and-remit system to address each of these issues.

2. Labeling the Line Item

103. In its *Truth-in-Billing* proceeding, the Commission issued a Further Notice of Proposed Rulemaking in 1999 seeking comment on the appropriate label to identify various charges relating to federal regulatory action on consumers' bills.[266] The Commission tentatively concluded that uniformity in labeling would better enable consumers to understand the charges and provide them a basis for comparison amongst providers.[267] At that time, the Commission excluded CMRS providers from these labeling requirements, but indicated that, should it adopt uniform labels for charges resulting from federal regulatory action, it would include CMRS providers to ensure consistency and understandability for consumers.[268] We now seek comment on whether to require carriers that elect to impose a separate line-item charge on customer bills to recover their contribution costs to describe the line item as the "Federal Universal Service Fee."[269] Many commenters support this proposal, stating that a uniform line-item description is warranted in view of confusion created by varying provider practices.[270] We invite commenters to address the need for a uniform line-item description and to provide specific examples of varying provider practices and how they lead to customer confusion. We also invite comment on

[265] *See* 47 U.S.C. § 254(d); *2001 Notice*, 16 FCC Rcd at 9911 paras. 48-49; *see also Universal Service Order*, 12 FCC Rcd at 9201 para. 853 ("we agree with the Joint Board and reject commenters' suggestions that the Commission mandate that carriers recover contributions through an end-user surcharge").

[266] *TIB Order and FNPRM*, 14 FCC Rcd at 7537 para. 71.

[267] *Id.*

[268] *Id.* at 7502 para. 18.

[269] *See* WorldCom Comments at 31.

[270] *See* CDD Comments at 8; Cingular Comments at 10; Florida State University Comments at 2; Home Comments at 8; Iowa Utilities Board Comments at 3; *but see* CompTel Comments at 6; CTIA Comments at 11-13; PCIA Reply Comments at 7-9.

whether requirements that labels on line-item charges relating to federal regulatory action be standard should be extended to CMRS providers. Additionally, we seek comment on permitting carriers to abbreviate the words in this description to address commenters' concerns that the proposed description exceeds the character limit in carrier billing systems.[271]

104. We recognize that certain commenters argue that mandating a uniform description for universal service contribution line items on customer bills would violate the First Amendment of the United States Constitution.[272] We note, however, that under certain circumstances speech may be regulated without running afoul of the First Amendment. In determining whether government regulation of commercial speech violates the First Amendment, courts apply a four-part test.[273] First, the court determines whether the expression is protected by the First Amendment.[274] For commercial speech to be afforded First Amendment protections, it must concern lawful activity and not be misleading.[275] Second, the court determines whether the government has a substantial interest in support of its regulation.[276] Third, the court determines whether the restriction on commercial speech directly and materially advances that interest.[277] Finally, the regulation may be no more extensive than necessary to serve that interest.[278] We seek comment on whether a requirement that carriers label their separate federal universal service line item on customer bills as the "Federal Universal Service Fee" would pass this four-part test.

105. First, we seek comment on whether the expression in question is protected by the First Amendment. Are some carriers' line items sufficiently confusing as to become misleading for purposes of the First Amendment standard?[279] Commenters that believe carrier line items are misleading are invited to provide specific examples of such line items.

106. Assuming that the labeling of line items is afforded First Amendment protections as lawful and non-misleading commercial speech, we next seek comment on whether the Commission's interest in requiring a uniform description of the federal universal service line item is substantial. The Commission has responsibility under the Act to ensure that consumers are able to make intelligent and well-informed commercial decisions in the increasingly competitive telecommunications market that the 1996 Act is intended to foster.[280] Even though

[271] So, for example, a carrier could call the Federal Universal Service Fee the "Fed. Univ. Service Fee" or the "Fed. Universal Serv. Fee." *See* Cingular Comments at 10; Sprint Reply Comments at 16; WorldCom Comments at 31.

[272] *See e.g.*, CompTel Reply Comments at 6; CTIA Reply Comments at 8; WorldCom Comments at 31. *See* U.S. CONST. amend. I.

[273] *See Lorillard Tobacco Co. v. Reilly*, 121 S. Ct. 2404, 2421-22 (2001) (*Lorillard*) (citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-564 (1980) (*Central Hudson*)).

[274] *Lorillard*, 121 S. Ct. at 2421.

[275] *Id.*

[276] *Id.*

[277] *Id.*

[278] *Id.*

[279] In the *Truth-in-Billing* proceeding, the Commission stated that line-item charges are being labeled in ways that could mislead consumers by detracting from their ability to fully understand the charges appearing on their monthly bills. *See TIB Order and FNPRM*, 14 FCC Rcd at 7531 para. 61.

[280] 47 U.S.C. §§ 201, 202.

the Commission currently has a guideline that requires telecommunications carriers to use standardized labels to identify charges resulting from regulatory action, commenters indicate that the labeling of federal universal service line items varies by carrier.[281] We seek comment on the extent to which the labeling of line items varies by carrier and invite commenters to provide examples of such variance. We also seek comment on whether the lack of uniform descriptions and the disparate recovery of universal service contributions from consumers may make comparison-shopping difficult for consumers. In addition, we seek comment on whether the Commission's interest would be substantial if we choose to adopt limitations on carrier mark-ups to universal service contribution line items that appear on end-user bills.[282] We seek comment on this analysis.

107. Third, we seek comment on whether a uniform labeling requirement would directly and materially advance the Commission's interest. We specifically invite comment on whether a uniform line-item description would ensure that the label describing the recovery of federal universal service contributions is consistent, understandable, and does not confuse or mislead consumers. Would uniform labeling better ensure that carriers provide consumers with information that will enable them to better understand their telecommunications bills?

108. Finally, we seek comment on whether a limitation on labeling such line items would be no more extensive than necessary to serve the Commission's interest in prohibiting misleading federal universal service related charges. This prong requires a reasonable fit between regulatory ends and means: "[n]ot necessarily the single best disposition but one whose scope is 'in proportion to the interest served.'"[283] A uniform labeling requirement would require that carriers describe the separate federal universal service line item on customer bills as the "Federal Universal Service Fee." We invite commenters to address concerns that a uniform labeling requirement would unnecessarily limit or censor truthful, non-misleading commercial speech.[284] For example, would a uniform labeling requirement limit a carrier's ability to provide additional information to its customers regarding the nature and purpose of the charge?[285] Moreover, would such a regulation limit carrier speech relating to other charges on customer bills? We seek comment on whether the proposed regulation would be valid under the scrutiny that is afforded restrictions on commercial speech.

109. We also seek comment on specific consumer outreach efforts that would help to make the universal service contribution recovery process more understandable for consumers. The Commission's Consumer Information Bureau currently conducts outreach directed at educating consumers about all aspects of the Commission's universal service programs,

---

[281] *See TIB Order and FNPRM*, 14 FCC Rcd at 7523; *see also* ACUTA Comments at 3; Brown University Comments at 3; Florida State University Comments at 2; NASUCA Comments at 3, 19; Western Kentucky University Comments at 2.

[282] *See supra* paras. 95-100.

[283] *See Board of Trustees v. Fox*, 492 U.S. 469, 480 (1989) (citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)); *see also Ward v. Rock Against Racism*, 109 S. Ct. 2746, 2758 (1989) (a regulation is narrowly tailored if the government interest would be achieved less effectively without the regulation).

[284] *See* CTIA Comments at 13. *See also 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment).

[285] *See TIB Order and FNPRM*, 14 FCC Rcd at 7533 para. 64.

including the contribution recovery process.[286] We seek comment on whether to expand the Consumer Information Bureau's outreach efforts. We invite commenters to propose specific outreach efforts the Consumer Information Bureau could undertake, either on its own, or in conjunction with carriers and other stakeholders. In the interim, the Consumer Information Bureau will continue its educational and outreach programs regarding federal universal service.

V. REPORT AND ORDER

110. In the *2001 Notice*, we recognized the need to reassess periodically the current contribution methodology to ensure that it remains consistent with the goals of the Act as the telecommunications marketplace evolves. Although we are seeking more focused comment on specific proposals to reform the Commission's universal service contribution methodology, we conclude that certain modifications to the current revenue-based contribution assessment methodology should be adopted now to ensure that the goals of the Act are maintained in the short term. Specifically, the measures we adopt in this Order will ensure that universal service funding remains specific and predictable while we consider whether to implement more substantial changes to the contribution methodology. In addition, these modifications will ensure that the recovery of universal service contributions is more understandable for consumers. These measures also will further reduce the regulatory costs of complying with universal service obligations and will ensure that the assessment of contributions remains equitable and nondiscriminatory.

111. First, we revise the Commission's rules to exclude universal service contributions from a contributor's assessable gross-billed interstate telecommunications revenues. This modification addresses "circularity" in the current methodology that may cause contributors to mark-up line items. Second, we amend the rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries. Third, we increase from eight to 12 percent the amount of domestic interstate revenues a contributor may have and still qualify for the limited international revenue exception to our universal service contribution requirements.

A. Eliminating Circularity

1. Background

112. Contributors currently are required to contribute to universal service based on gross-billed interstate telecommunications revenues, including revenues from charges identified on a bill as recovering contributions to the universal service support mechanisms.[287] This requirement is meant to ensure that such revenues are properly reported and included in contributors' contribution bases, and to make it easier for the Commission to verify that

[286] For example, the Consumer Information Bureau operates two consumer centers that consumers can contact to obtain information on the Commission's universal service programs. The consumer centers may be reached at 1-888-CALL-FCC (1-888-225-5322) (voice) or 1-888-TELL-FCC (1-888-835-5322) (TTY). The Consumer Information Bureau also provides fact sheets on universal service issues through the Commission's website. *See* <http://www.fcc.gov/cib>.

[287] *See* FCC Form 499-A, at line 403 ("Itemized charges levied by the reporting entity in order to recover contributions to state and federal universal service support mechanisms should be classified as end-user billed revenues and should be reported on Line (403)").

contributors are not over-recovering universal service contributions from subscribers.[288] Commenters, however, have indicated that they increase their universal service line items above the contribution factor in part to account for the inclusion of universal service line-item revenues in their contribution bases.[289] Such "circularity" leads to inflation in universal service line items, which adds to customer confusion regarding the reasons for mark ups. To address the problem of "circularity," we proposed to impute pass-through charges for all contributors and remove the imputed amounts from each contributor's contribution base.[290] Two commenters supported the removal of universal service contributions from the contribution base, and no commenter opposed this proposal.[291]

2. Discussion

113. We adopt our proposal to eliminate "circularity" from contribution assessments by excluding each contributor's actual universal service contributions from its assessable gross-billed interstate telecommunications revenues. Although the elimination of circularity will reduce the contribution base and therefore will result in an increase to the contribution factor, this measure will eliminate one cause for contributors to recover amounts in excess of the contribution factor.

114. We clarify how the exclusion of contributor contributions from the contribution base will operate in practice. Contributors will continue to file the Form 499-Q with their gross-billed interstate telecommunications revenues from the prior quarter. As discussed above, a contributor's reported gross-billed interstate telecommunications revenues from the prior quarter serve as the basis for its contributions in the next quarter. USAC will subtract from a contributor's contribution base in the upcoming quarter those amounts contributed to universal

[288] *See 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Notice of Proposed Rulemaking and Notice of Inquiry, 13 FCC Rcd 19295, 19307 para. 22 (1998).

[289] *See, e.g., AT&T Projected Revenue Request.* For example, assume a carrier receives $100 in gross-billed interstate telecommunications revenues, including revenues from the recovery of universal service contributions, in a particular reporting period. If the contribution factor for that period is 7%, the carrier's contribution would be $7. If the carrier then passed through that $7 assessment to its end-user customers and the carrier's other revenues remained stable, in the next reporting cycle that carrier would report $107 in gross-billed interstate revenues. Assuming the contribution factor remains at 7%, the carrier's contribution in the next period would increase to $7.49. In order to include this entire amount in a line item on customer bills, the carrier would need to increase its universal service line item above the current contribution factor. In the example provided, the carrier would need a contribution line item of 7.49% to recover all of its contribution costs through a line item. We acknowledge that if total universal service costs remained constant and the contribution base increased, the contribution factor would in fact decrease. *See Federal-State Joint Board on Universal Service, Division Announces Release of Revised Universal Service Worksheet, FCC Form 457, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Twenty-First Order on Reconsideration in CC Docket No. 96-45, and Memorandum Opinion and Order in CC Docket Nos. 96-45, 97-21, and 98-171, 15 FCC Rcd 12050, 12058-59 (2000) (*Twenty-First Order on Reconsideration*). As a practical matter, however, because the growth in total program costs has outpaced growth in the contribution base, the contribution factor has increased over time.

[290] *See 2001 Notice*, 16 FCC Rcd at 9903 para. 22 n. 57.

[291] *See* Bahr Comments at 2-7; Letter from Jamie M. Tan, SBC Telecommunications, Inc., to Magalie Roman Salas, Federal Communications Commission, filed Dec. 14, 2001, at 5.

service in the prior quarter.[292] Contributions will be credited in the quarter in which they are received by USAC. We direct USAC to begin excluding carrier contributions from the contribution base in the third quarter of 2002.

115. We note that excluding actual contributions from a contributor's contribution base is distinguishable from previously-rejected proposals to entirely exclude contributor-imposed universal service charges from the contribution base.[293] If we excluded contributor-imposed universal service charges from the contribution base, contributors could reduce their contribution obligations by reducing the recovery of costs through service-related charges and increasing the recovery of costs through universal service charges.[294] Excluding contributor-imposed universal service line-item charges also would create incentives for contributors that currently recover their universal service contributions through their rates to alter their business plans and recover such contributions through a line item. By only excluding from the contribution base amounts actually contributed to universal service, we avoid creating such incentives, provide contributors with a real choice of recovery methodologies, and maintain competitive neutrality.

B. Consolidated Form 499 Filing for Certain Contributors

1. Background

116. To collect information from contributors about their end-user telecommunications revenues, the Commission requires contributors to submit to USAC the Telecommunications Worksheet (Worksheet), also known as Form 499-A and Form 499-Q, five times per year.[295] In addition to collecting revenue information for universal service contribution purposes, the Worksheet also collects revenue information for regulatory fee collection, the Telecommunications Relay Services Fund, the cost recovery mechanism for administration of the North American Numbering Plan, and Local Number Portability.[296] Contributors also use the Worksheet to report contact information regarding their agents for service of process in the District of Columbia, as well as to provide registration information to enable the Commission to monitor contributor activity, especially with regard to "slamming."[297] Contact information included in the Worksheet also enables the Commission to confirm contributor compliance with obligations under the Communications Assistance for Law Enforcement Act (CALEA).[298]

117. The instructions for the Worksheet require that each legal entity (defined as

[292] We clarify that fees and other charges associated with late payments are not contributions to universal service, and therefore will not included in amounts subtracted from a contributor's contribution base for purposes of eliminating circularity.

[293] *See Twenty-First Order on Reconsideration*, 15 FCC Rcd at 12058-60 paras. 13-15.

[294] *See id.* at 12059 para. 15.

[295] The Form 499-A is filed annually, while the Form 499-Q is filed quarterly.

[296] *See Consolidated Reporting Order*, 14 FCC Rcd 16602.

[297] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16025-26 (2001). The term "slamming" refers to unauthorized changes to a customer's presubscribed carrier.

[298] *See* 47 C.F.R. § 64.2103.

entities with separate articles of incorporation) submit a separate Worksheet.[299] The purpose of this requirement is to ensure, among other things, that: (1) the filed information may be confirmed, if necessary, by a company's accounting books; (2) the officer filing the information is familiar with such information; (3) there is a contact person for each entity; (4) contributors will be able to document and respond to all slamming complaints; and (5) there is no disruption to the Commission's universal service, Telecommunications Relay Services, Local Number Portability, North American Numbering Plan Administration, and regulatory fees programs.

118. In certain circumstances, however, this requirement may result in requiring a single contributor to file multiple separate Worksheets. This may happen when a contributor's corporate structure contains several separate legal entities, even if the contributor itself functions as a single entity. In particular, some wireless contributors obtain licenses in the names of affiliates, subsidiaries, and other related legal entities even if the company actually functions as a single entity in all other respects. Accordingly, such a company must file separate Worksheets for each of its subsidiaries five times per year, even though the company functions as a single entity. This separate filing requirement may even result in a contributor having to artificially divide its whole company revenues into separate revenue amounts for each of its subsidiaries, solely for Worksheet reporting purposes. Verizon Wireless, for example, reports that, as a result of the quarterly filing requirement, it will allocate approximately 4,700 additional hours each year to prepare and submit 700 forms on behalf of 140 separate corporate subsidiaries.[300] A number of commenters asked the Commission to eliminate the separate reporting requirements for affiliated entities.[301]

2. Discussion

119. We agree with commenters that we should streamline the reporting requirements to permit contributors to submit revenue data on a consolidated basis under certain circumstances. We therefore modify our reporting requirements to enable contributors meeting certain criteria to file the Worksheet on a consolidated basis. The criteria we adopt for permitting consolidated filings are designed to ensure that a contributor actually functions as a single entity, and to obtain essential revenue and contact information from such a contributor. The ability to file a consolidated Worksheet may substantially decrease the administrative burdens on some contributors. For example, it may ameliorate the need of some contributors to artificially divide their whole company revenues into separate revenue amounts for their subsidiaries solely for Worksheet reporting purposes. We anticipate that many wireless contributors will qualify and choose to file the Worksheet on a consolidated basis. Furthermore, this revision may dramatically decrease the number of Worksheets filed with USAC, thereby reducing the administrative burden on the Commission's data collection agent and fund administrators. Most importantly, permitting contributors to have the option of filing on a consolidated basis will have no negative impact on the integrity of the information contained in the Worksheet.

---

[299] *See* Instructions to FCC Form 499-A at 7; *see also Second Order on Reconsideration*, 12 FCC Rcd at 18512, Appendix C.

[300] *See* Verizon Wireless Comments at 18.

[301] *See* CTIA Comments at 11; Cingular Comments at 8; Nextel Comments at 12; PCIA Reply Comments at 9; USAC Reply Comments at 22; Verizon Wireless Comments at 18.

120. Under the modified reporting requirements we adopt here, consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:

(1) A single entity oversees the management of the affiliated systems;
(2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
(3) All revenues are posted to a single general ledger;
(4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
(5) Customers have a single point of contact;
(6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
(7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;[302]
(8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
(9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
(10) The consolidated filer acknowledges that it: (A) was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent as a result of such undertaking or payments; (B) was not left with unreasonably small capital as a result of such undertaking or payments; and (C) was not left unable to pay debts as they matured as a result of such undertaking or payments.[303]

121. Each year, entities choosing to file on a consolidated basis must file a statement certifying that they meet all of the above conditions. Such certification also must include: (1) a list of the legal names of all legal entities that are covered by the filing; (2) the Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FRN; and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent. Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis. We direct USAC to begin

[302] A CMRS carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filing entity or any of its affiliated legal entity that also are not subject to the slamming regulations.

[303] For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

accepting such consolidated Worksheets in the second quarter of 2002.

122. We also amend section 54.702 by deleting subsection 54.702(f) of our rules. Under section 54.702(f) of our rules, USAC is required to periodically compare information from "Telecommunications Relay Services Fund Worksheets" with information submitted on "Universal Service Worksheets."[304] In 1999, however, the Commission established the FCC Form 499 Telecommunications Reporting Worksheet, which consolidated reporting requirements for the universal service mechanisms, the Telecommunications Relay Services Fund, the cost recovery mechanism for administration of the North American Numbering Plan, and the cost recovery mechanism for administration of long-term number portability.[305] As a result, section 54.702(f) was made obsolete, but inadvertently was not deleted at that time. Accordingly, we delete it now.

C. Limited International Revenues Exception

1. Background

123. Under section 54.706(c) of the Commission's rules, a provider of interstate and international telecommunications is not required to contribute based on its international telecommunications end-user revenues if its interstate telecommunications end-user revenues constitute less than eight percent of its combined interstate and international end-user telecommunications revenues.[306] The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any telecommunications provider whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user telecommunications revenues.[307] The Commission concluded that the rule is consistent with the determination of the United States Court of Appeals for the Fifth Circuit that requiring a carrier to pay more universal service contributions than it derives from interstate revenues violates the requirement in section 254(d) of the Act that universal service contributions be equitable and nondiscriminatory.[308]

124. In the *2001 Notice*, we sought comment on whether to increase the percentage of interstate end-user telecommunications revenues a contributor could have and still qualify for the limited international revenues exception to our universal service contribution requirements.[309] Several parties submitted comments in support of increasing the current percentage.[310] No party submitted comments opposing such a measure.

---

[304] *See* 47 C.F.R. § 54.702.

[305] *See Consolidated Reporting Order*, 14 FCC Rcd 16602.

[306] *See* 47 C.F.R. § 54.706(c); *see also Eighth Report and Order*, 15 FCC Rcd at 1687 para. 19.

[307] *Id.*

[308] *See id.* (citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 434-35).

[309] *See 2001 Notice*, 16 FCC Rcd at 9907 para. 32.

[310] *See* BTNA Comments 2-4; Lockheed Comments at 4-9; Loral Reply Comments a 3-4; Primus Comments at 3-4; Verestar Reply Comments at 3.

2. Discussion

125. We conclude that the limited international revenues exception should be increased from eight to 12 percent, while we consider whether to move away from a revenue-based assessment system altogether. Consistent with section 254(d) of the Act, we conclude that raising the threshold to 12 percent will ensure that a contributor's universal service contribution does not exceed the amount of its interstate end-user telecommunications revenues by providing a margin of safety to account for any possible increases to the contribution factor over time. When the limited international revenues exception was implemented in November 1999, the universal service contribution factor was 5.8995 percent,[311] and the Commission anticipated that the universal service contribution factor would not exceed eight percent in the near future. The Commission recently established a universal service contribution factor of 6.808 percent.[312] As a result of many factors, including possible decreases in assessable revenues and increases in universal service funding requirements over time, modest increases to the contribution factor may occur in the foreseeable future.[313] If the universal service contribution factor increases to eight percent, a contributor may become obligated to contribute to the universal service mechanisms an amount that exceeds the amount of its interstate end-user telecommunications revenues. With the elimination of "circularity" and anticipated implementation of interstate access support for non-price cap carriers, Commission staff projects that the contribution factor may exceed 8 percent in 2002.[314] This projection is predicated on the removal of prior period universal service contributions from the contribution base, the continuation of the current assessment system based on revenues, anticipated growth in the universal service mechanisms, and continued modest growth in assessable interstate end-user telecommunications revenues. Large-scale migration to services that are not easy to categorize by jurisdiction or marketplace disruptions, such as a prolonged recession, may result in additional increases to the contribution factor over time. We therefore conclude that increasing the threshold to qualify for the international revenues exception to 12 percent will ensure that contributors are not required to contribute more to universal service than they derive from interstate end-user telecommunications revenues. We direct USAC to begin applying the higher threshold to qualify for the international revenues exception in the second quarter of 2002.

126. We conclude that the modified rule is consistent with the requirement in section 254(d) that universal service support be sufficient. Increasing the interstate revenue threshold from eight percent to 12 percent to qualify for the limited international revenues exception will exclude only slightly more international revenues from the contribution base. Based on revenue data reported for the third quarter of 2001, Commission staff projects that increasing the interstate revenue threshold to 12 percent would result in less than a 0.5 percent reduction in the contribution base. The relatively small amount of additional international revenue that will be

---

[311] *See Proposed Fourth Quarter 1999 Universal Service Contribution Factor for November and December 1999, CC Docket No. 96-45*, Public Notice, DA 99-2109 (Com. Car. Bur. rel. Oct. 8, 1999).

[312] *See First Quarter 2002 Contribution Public Notice*, 16 FCC Rcd 21329.

[313] We recently have observed periodic decreases in assessable interstate and international end-user telecommunications revenues. We also recently have implemented reforms to certain universal service support mechanisms, which will result in increased funding requirements over time. *See, e.g., Multi-Association Group Order*, 16 FCC Rcd at 19613 para. 1; *Rural Task Force Order*, 16 FCC Rcd 11244.

[314] *See supra* n. 111.

excluded from the contribution base should not dramatically affect the level of the quarterly contribution factor or the ability of providers to meet their contribution obligations.

127. We decline to increase the threshold above 12 percent or to exclude international revenues from the contribution requirement altogether.[315] As the Commission previously has observed, under section 254(d) of the Act, all interstate telecommunications providers are required to contribute without regard to whether their revenues are interstate or international.[316] The Act requires only that contributions be equitable and nondiscriminatory, and specific, predictable, and sufficient. As the Commission previously concluded, the modified international revenues exception satisfies each of these requirements.[317] We therefore see no reason to further broaden the exception at this time.

128. Our adoption of a 12 percent threshold to qualify for the limited international revenues exception should not be taken as an indication that we expect the contribution factor to rise to that level in the near future. To the contrary, we choose 12 percent because it will provide for a more than adequate margin of safety if the current contribution factor increases over time. Moreover, we seek comment on measures in the Further Notice that are intended to address some of the underlying causes of increases to the contribution factor. In the event that the contribution factor increases or decreases significantly, the Commission could revise the 12 percent threshold to a more appropriate level.[318]

VI. PROCEDURAL ISSUES

A. Ex Parte Presentations

129. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.[319]

B. Initial Paperwork Reduction Act of 1995 Analysis

130. This Further Notice contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Further Notice; OMB comments are due 60 days from the date of publication

[315] *See* BTNA Comments at 2; Lockheed Martin Comments at 9; Loral Reply Comments at 4; Primus Comments at 4.

[316] *See Eighth Report and Order*, 15 FCC Rcd at 1688 para. 22. We note that, under section 254(d) of the Act, the Commission may exempt a carrier or class of carriers from contribution requirements if the carrier's contribution would be *de minimis*. *See* 47 U.S.C. § 254(d).

[317] *See Eighth Report and Order*, 15 FCC Rcd at 1688-90 paras. 21-26.

[318] We note that, if we adopt a per-connection assessment, a limited international revenue exception would no longer be necessary. Under the proposal discussed in greater detail above, a carrier would contribute based on its connections to a public network and therefore no longer would need to distinguish between international and interstate revenues. *See supra* paras. 41-44.

[319] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

of this Further Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Initial Regulatory Flexibility Act Analysis

131. As required by the Regulatory Flexibility Act (RFA),[320] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. 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 below in section VI.D. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[321] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[322]

1. Need for and Objectives of the Proposed Rules

132. Over the last few years, important changes have occurred in the interstate telecommunications marketplace.[323] Recently, interstate revenues have declined for certain interexchange carriers, who are now responsible for contributing approximately 63 percent of federal universal service funding. We observed a decline in assessable revenues in the first half of 2001.[324] One analyst projects that United States long distance revenues will decline 12 percent in 2001.[325] Various factors may be responsible for this decline, including migration of customers to new products and services, local exchange carrier entry into the long distance market, and related price competition. This trend could erode the contribution base over time, requiring increases in the contribution factor.

133. Additionally, since 1997, marketplace developments also have blurred the distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues on which the current contribution system is based. Carriers increasingly are bundling services together in creative ways, for example by offering flat-rate packages that include both

---

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

[321] *See* 5 U.S.C. § 603(a).

[322] See *id.*

[323] *See 2001 Notice*, 16 FCC Rcd at 9899 paras. 12-13.

[324] *See, e.g., Fourth Quarter 2001 Contribution Public Notice*, 16 FCC Rcd 11990 (second quarter 2001 estimate of interstate and international end-user telecommunications revenues of $19.597 billion); *Third Quarter 2001 Contribution Public Notice*, 16 FCC Rcd 11990 (first quarter 2001 estimate of interstate and international end-user telecommunications revenues of $20.141 billion).

[325] *See* COMMUNICATIONS DAILY, September 27, 2001, at 5 (citing Solomon-Wolff Associates report).

local and long distance services. Virtually all of the major mobile telecommunications service providers now offer a type of Digital-One-Rate (DOR) pricing plan that allows customers to purchase a bucket of minutes on a nationwide, or nearly nationwide, network without incurring roaming or long distance charges.[326] A number of carriers, including AT&T Wireless, Verizon Wireless, and Cingular Wireless, also have begun offering regional DOR calling plans.[327] At the end of 2000, approximately 20 million mobile telephone customers subscribed to calling plans that offer free nationwide long distance.[328] The availability of such plans compounds the inherent difficulty of identifying interstate revenues in a mobile environment. Traditional wireline providers also are increasingly offering bundled rates for packages of local and long distance services.[329]

134. Likewise, more and more carriers now offer bundled packages of telecommunications services and customer premises equipment (CPE) or information services. The accelerating development of new technologies like "voice over Internet" increases the strain on regulatory distinctions such as interstate/intrastate and telecommunications/non-telecommunications, and may reduce the overall amount of assessable revenues reported under the current system.[330] Additional legal, technological, and market developments that we cannot foresee now also could significantly impact the universal service contribution base.

135. In light of these and other changes in the telecommunications marketplace, the Commission has recognized the need to review the current system for assessing universal service contributions. Our examination of the record reveals a consensus that reforms are necessary, although different industry segments differ on what reforms should be undertaken.[331] Our primary goal is to ensure the stability and sufficiency of the universal service fund as the marketplace continues to evolve. We also seek to identify the best means of ensuring that contributors continue to be assessed in an equitable and nondiscriminatory manner, and recover their contributions in ways that are fair and understandable for consumers. In addition, we seek to provide certainty to market participants, and minimize the regulatory costs of complying with universal service obligations.

2. Legal Basis

136. The legal basis as proposed for this Further Notice is contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201-205, 254, 403.

---

[326] Paul Kagan Associates, Inc., National Order-Rate Plans Take Off, WIRELESS MARKET STATS, Jun. 16, 2000, at 11. *See Sixth CMRS Competition Report*, 16 FCC Rcd at 13377-78.

[327] *See* Deborah Mendez-Wilson, Big Carriers Get Personal With Regional Calling Plans, WIRELESS WEEK, Feb. 26, 2001, at 12; *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13378.

[328] *See* Andrew Backover, *AT&T Loss Reflects Long-Distance Shift, Consumers Turn To Calling Cards, Wireless*, USA TODAY, Jan. 30, 2001, at B3 (citing analyst Peter Friedland at W.R. Hambrecht); *see also Sixth CMRS Competition Report*, 16 FCC Rcd at 13381-82.

[329] *See supra* para. 13.

[330] *See Report to Congress*, 13 FCC Rcd at 11508 para. 14 , 11541 para. 83.

[331] *See, e.g.*, AT&T Comments at 13; Cable and Wireless Reply Comments at 4; Center for Digital Democracy Comments at 7; Excel Comments at 6; Nextel Comments at 6; Qwest Comments at 3; SBC Comments at 4; Texas OPC and CFA Comments at 7; Verizon Comments at 5; WorldCom Comments at 14.

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

137. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications services that offer telecommunications services for a fee.[332] Thus, we expect that the proposal in this proceeding could have a significant economic impact on a substantial number of small entities. Of the estimated 5,000 filers of the Telecommunications Reporting Worksheet, FCC Form 499, we do not know precisely how many are small entities, but we offer below some estimates of the number of small entities within each of several major carrier-type categories.

138. To estimate the number of small entities that could be affected by these proposed rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[333] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[334] A small business concern is one that: (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).[335]

139. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[336] We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

140. 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."[337] The SBA's Office of Advocacy

---

[332] 47 C.F.R. §§ 52.17 (applying to all telecommunications carriers), 54.703 (applying to every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and certain payphone providers), *and* 64.604(c)(4)(iii)(A) (applying to every carrier providing interstate telecommunications services). We note that the Commission's rules for universal service exempt certain small contributors, *i.e.*, contributors that have revenue below a stated threshold. 47 C.F.R. § 54.705.

[333] 5 U.S.C. § 601(6).

[334] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." *Id.*

[335] Small Business Act, 15 U.S.C. § 632.

[336] 13 C.F.R. § 121.201. Categories 4812 and 4813 have recently been reclassified as NAICS codes 513321, 513322, 51331, and 51334.

[337] 5 U.S.C. § 601(3).

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.[338] 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.

141. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report.[339] According to data in the most recent report, there are 4,822 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

142. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[340] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[341] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

143. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[342] According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[343]

---

[338] Letter from Jere W. Glover, SBA, to Chmn. William E. Kennard, FCC, dated 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) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent local exchange carriers in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[339] *Trends Report*, Table 16.3.

[340] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) ("1992 Census").

[341] 15 U.S.C. § 632(a)(1).

[342] 1992 Census, *supra*, at Firm Size 1-123.

[343] 13 C.F.R. § 121.201, SIC Code 4813.

All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

144. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[344] The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499-A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 541 resellers.[345] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this Order.

145. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. The applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[346] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[347] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends Report*, 806 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[348] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate

[344] 13 C.F.R. § 121.201, SIC Code 4813.

[345] *See Trends Report*, Table 16.3. The total for resellers includes both toll resellers and local resellers. The category for CAPs also includes competitive local exchange carriers (CLECs) (total of 129 for both).

[346] 13 C.F.R. § 121.201, SIC code 4812.

[347] 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

[348] *Trends Report*, Table 16.3.

with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small cellular service carriers that may be affected by the proposed rules, if adopted.

146. *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 definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[349] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[350] If this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

147. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[351] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[352] The SBA has approved these definitions.[353] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[354] Two auctions of Phase II licenses have been conducted. In the first auction, nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158

[349] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

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

[351] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997).

[352] *Id.* at 11068-69 para. 291.

[353] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[354] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau, October 23, 1998).

licenses.[355]

148. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[356] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[357] The SBA has approved these definitions.[358] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.[359] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends Report*, 427 carriers reported that they were engaged in the provision of paging and messaging services.[360] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 427 small paging carriers that may be affected by the decisions and rules adopted in this Order. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

149. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[361] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[362] These regulations defining "small entity" in the

---

[355] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

[356] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, at paragraph 291-295 (1997).

[357] *220 MHz Third Report and Order*, 12 FCC Rcd 11068-69, at paragraph 291 (1997).

[358] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (January 6, 1998).

[359] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecommunications Bureau (October 23, 1998).

[360] *Trends Report*, Table 16.3.

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

[362] *See* Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96-278, WT Docket No. 96-59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996)

context of broadband PCS auctions have been approved by the SBA.[363] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[364] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. 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.

150. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.[365] 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. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve 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 auctions. 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 IRFA, 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.

151. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[366] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[367] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no

[363] *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, 5581-84 (1994).

[364] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released January 14, 1997).

[365] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92-100, Docket No. PP 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 15 FCC Rcd 10456 (2000).

[366] The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

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

more than 1,500 persons.[368] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

152. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[369] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[370] 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 definition.

153. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR Section 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[371] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 EA licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

154. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

155. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

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

156. Should the Commission decide that fundamental reform of the existing

[368] 13 C.F.R. § 121.201, SIC code 4812.

[369] The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

[370] 13 C.F.R. § 121.201, SIC code 4812.

[371] 47 C.F.R. § 90.814(b)(1).

contribution methodology is needed, the associated rule changes potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. As discussed previously, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports.[372] Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications service providers. In this Further Notice, we therefore seek comment on the frequency with which carriers should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of the possible reforms. Entities, especially small businesses, are encouraged to quantify the costs and benefits of the reporting requirement proposals.

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

157. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance 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.[373]

158. As discussed previously, this Further Notice seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. We seek more focused comment on whether to assess contributions based on the number and capacity of connections provided to a public network, as proposed by some commenters.[374] A connection-based assessment approach may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies. By harmonizing the contribution system with the telecommunications marketplace, a connection-based assessment approach may help to ensure the stability and sufficiency of the universal service contribution base over time. We also invite commenters to supplement the record developed in response to the *2001 Notice* with any new arguments or data regarding whether to retain or modify the existing revenue-based system. For example, some commenters suggest that we retain or modify slightly the existing system.[375] In addition, we seek additional comment in the Further Notice on reforming the contribution recovery process to make it more fair and understandable for consumers.

159. Wherever possible, the Further Notice seeks comment on how to reduce the

[372] *See supra* paras. 76-82.

[373] 5 U.S.C. § 603(c).

[374] *See generally* AT&T, WorldCom, Sprint, and Level 3 comments supporting connection-based assessment.

[375] *See generally* ASCENT, AT&T Wireless, PCIA, and SBC comments supporting assessment on current revenues, APCC, Excel, and Iowa Utilities Board comments supporting assessment on projected revenues.

administrative burden and cost of compliance for small telecommunications service providers. We seek comment, for example, on the appropriate frequency and content of reporting under a connection-based methodology. We particularly seek comment from contributors that are "small business concerns" under the Small Business Act.

160. Contributors currently report their gross-billed interstate end-user telecommunications revenues on a quarterly basis on the Form 499-Q. We seek comment on requiring contributors to report the number and capacity of their connections on a monthly basis.[376] Under this proposal, each month contributors would receive a fill-in-the-blank bill from USAC and would remit their contribution based on the number and capacity of their end-user connections in service as of the end of the prior month. Therefore, the proposed new Form 499-M would serve both as a contributor's monthly bill and its reporting obligation. Although contributors would have to report more frequently under this proposal than under the current system, their overall reporting burdens may be significantly reduced because they would only be required to report the number and capacity of the connections they provide, rather than their interstate telecommunications revenues. In addition, a contributor's reporting obligation and its bill would become one in the same. We also seek comment on whether requiring only one entity to contribute for a connection would ease some of the administrative burdens associated with compliance.[377] Last, we also seek comment on an alternative that might assist small entities: how to craft a *de minimis* exemption should the Commission choose to adopt a connection-based system.[378]

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

161. None.

D. Comment Filing Procedures

162. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days or fewer from publication in the Federal Register, and reply comments 45 days or fewer from publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[379]

163. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, 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 for e-mail comments, commenters should send an e-mail to

[376] *See supra* paras. 76-82.

[377] *See supra* para. 63.

[378] *See supra* para. 68.

[379] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

164. 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 appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

165. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Sheryl Todd, Accounting Policy Division, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 96-45, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12st Street, S.W., Room CYB402, Washington, D.C. 20554.

166. Written comments by the public on the proposed and/or modified information collections are due on or before thirty days after the date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503 or via the Internet to JeanetteThornto@omb.eop.gov.

E. Final Regulatory Flexibility Act Analysis

1. Need for, and Objectives of, the Report and Order

167. As required by the Regulatory Flexibility Act (RFA),[380] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2001 Notice*.[381] The Commission sought written public comment on the proposals in the *2001 Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[382]

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

[381] *2001 Notice*, 16 FCC Rcd at 9912-20.

[382] *See* 5 U.S.C. § 604.

168. In this Order, we adopt modifications to our current contribution methodology, which will further refine and streamline the assessment of universal service contributions. First, we amend the rules governing submission of FCC Form 499 to permit contributors to exclude universal service contributions from their assessable gross-billed interstate telecommunications revenues.[383] This modification addresses "circularity" in our current methodology that may cause contributors to mark-up line items. Second, we amend our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries.[384] This modification will allow certain carriers to reduce the burdens associated with complying with the reporting requirements of the universal service fund. Third, we increase from eight to 12 percent the amount of domestic interstate revenues a contributor may have and still qualify for the limited international revenue exception to our universal service contribution requirements.[385] Examination of the record in this proceeding demonstrates the need for these modifications, which address specific concerns raised by commenters to the *2001 Notice*.[386]

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

169. The Commission received comments related to the needs of small local telephone companies. In particular, the Small Business Administration's Office of Advocacy suggested that the Commission should retain the current contribution methodology to avoid raising the administrative costs on small businesses associated with compliance.[387] While we retain the current methodology, we note that the Commission, concurrent with the issuance of the Order adopted a Further Notice that seeks comment on a specific plan to fundamentally reform the contribution methodology. The proposed methodology detailed in the Further Notice may result in a program with significantly reduced administrative burdens.[388]

170. In the Order, however, the Commission adopts certain modifications to the existing methodology. In particular, the Commission adopts a proposal suggested by many wireless carriers to allow certain contributors to file on a consolidated basis, which should alleviate some of the administrative burden associated with complying with the universal service fund.[389] Additionally, the Commission's reform of the limited international revenue exception should help continue to ensure that contributors are not required to contribute more to universal service than they derive from interstate end-user telecommunications revenues.[390] The

[383] *See Order* at IV.A.

[384] *Id.* at IV.B.

[385] *Id.* at IV.C.

[386] Bahr Comments at 2-7 (discussing circularity); BTNA Comments at 2-4, Lockheed Comments at 4-9, Loral Reply Comments at 3-4 (discussing limited international revenue exception); Verizon Wireless Comments at 18, CTIA Comments at 11, Cingular Comments at 8, Nextel Comments at 12; PCIA Reply Comments at 9 (discussing consolidated filing).

[387] SBA Reply Comments at 4.

[388] Ad Hoc Comments at 27-33; AT&T Comments at 13; Nextel Comments at 8; Sprint Comments at 12; Telstar Reply Comments at 7; WorldCom reply Comments at 22.

[389] Cingular Comments at 8; Nextel Comments at 12; Verizon Wireless Comments at 18; WorldCom Reply Comments at 27.

[390] BTNA Comments at 2.

Commission has through these modifications minimized potential burdens raised by its existing contribution methodology, including the burdens on small entity carriers.

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

171. 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.[391] The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[392] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[393] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[394]

172. We have described in detail in the Initial Regulatory Flexibility Analysis in this proceeding the categories of entities that may be directly affected by our proposals.[395] For this Final Regulatory flexibility Analysis, we hereby incorporate those entity descriptions by reference.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

173. Pursuant to the Order, the only new reporting requirement is that we amend our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries.[396] The Commission based its decision in part on the fact that the reduction in administrative costs for these carriers would be significant. We therefore find that this change amounts to a positive compliance change for carriers, including small entity carriers.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternative Considered

174. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification,

---

[391] 5 U.S.C. § 604(a)(3).

[392] 5 U.S.C. § 601(6).

[393] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

[394] 15 U.S.C. § 632.

[395] *See supra* paragraphs 142-155.

[396] *Id.* at IV.B.

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.[397]

175. The Commission has taken numerous steps to minimize significant economic impacts on small entities of modifying the universal service contribution methodology adopted in this Order. By eliminating circularity that exists under the current contribution methodology, we reduce one cause for contributors to recover amounts in excess of the current contribution factor and will help address consumer concerns regarding the disparate recovery of universal service contributions through line items.[398] Further, by amending our rules to permit contributors to submit revenue data on a consolidated basis on behalf of commonly-owned subsidiaries, we substantially decrease the administrative burdens of some contributors.[399] We anticipate that many wireless contributors, for example, will choose to file on a consolidated basis. Finally, by increasing the international revenue exception from eight percent to 12 percent, we ensure that a contributor's universal service obligation does not exceed the amount of its interstate end-user telecommunications revenues.[400]

6. Report to Congress

176. The Commission will send a copy of this Order, including the FRFA analysis, in a report to be sent to Congress pursuant to the Congressional Review Act.[401] In addition, the Commission will send a copy of this Order, including this FRFA analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA analysis (or summaries thereof) also will be published in the Federal Register.[402]

7. Paperwork Reduction Act Analysis

177. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

VII. ORDERING CLAUSES

178. Accordingly, for the above stated reasons:

179. IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j),

---

[397] 5 U.S.C. § 603(c).

[398] *See supra* Section V.A.

[399] *See supra* V.B.

[400] *See supra* V.C.

[401] *See* 5 U.S.C. § 801(a)(1)(A).

[402] *See* 5 U.S.C. § 604(b).

254, 303(r) this Report and Order IS ADOPTED. The collections of information contained within this Order are contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collections of information.

180. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A attached hereto, effective thirty (30) days after the publication of this REPORT AND ORDER in the Federal Register.

181. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

182. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403, this Further Notice of Proposed Rulemaking IS ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

APPENDIX A – FINAL RULES

Part 54 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE

Subpart H -- Administration

1. Section 54.702 is amended by deleting paragraph (f).

2. Section 54.706 is amended by revising paragraphs (b) and (c) as follows:

§ 54.706 Contributions

(a) * * *
(b) Except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions.
(c) Any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers, schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in 47 C.F.R. 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

* * * * *

3. Section 54.709 is amended by revising paragraph (a), paragraph (a)(1) and the first sentence of paragraph (a)(2) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and a contribution factor determined quarterly by the Commission.
(1) For funding the federal universal service support mechanisms, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions.
(2) The quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support

mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. * * *

* * * *

APPENDIX B

LIST OF PARTIES FILING COMMENTS AND REPLY COMMENTS

Commenter	Abbreviation
ACUTA, Inc.	ACUTA **(late file, rec'd 7/2)**
Ad Hoc Telecommunications	Ad Hoc
American Mobile Telecommunications Association, Inc.	AMTA
American Public Communications Council, The	APCC
Arch Wireless, Inc.	Arch
Association of Communications Enterprises, The	ASCENT
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AT&T Wireless
Bahr, Susan (small wireline and wireless carriers)	Law Office of Susan Bahr
BBG Communications, Inc.	BBG
BellSouth Corporation	Bell South
Brown University	Brown
BT North America Inc.	BT
Cellular Telecommunications & Internet Association	CTIA
Center for Digital Democracy, The Edgemont Neighborhood Coalition Migrant Legal Action Program	CDD et al.
Cingular Wireless LLC	Cingular
EPIK Communications	EPIK
Excel Communications, Inc.	Excel
Florida State University	Florida U
Home Telephone Company, Inc.	Home Telephone Company
IDT Corporation	IDT
Iowa Utilities Board	IUB
Lockheed Martin Global Telecommunications, LLC	Lockheed Martin
National Exchange Carrier Association, Inc.	NECA
National Association of State Utility Consumer Advocates	
National Telephone Cooperative Association	NTCA **(late filed, rec'd 7/2)**
Nextel Communications, Inc.	Nextel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Primus Telecommunications, Inc.	Primus
Qwest Communications International, Inc.	Qwest
Rural Cellular Association	RCA
SBC Communications, Inc.	SBC
Small Paging Carrier Alliance	Small Paging Alliance
Sprint Corporation	Sprint
Telstar International, Inc	Telstar
Teltronic, Inc. ERC Communications, Huffman Communications,	26 De Minimis Carriers

South Plains Communications,
Mobile Relays, Inc.,
Megahertz Technology, Inc.,
Electrocomm – Michigan, Inc.,
Net Wave Communications, Inc.,
Two Way Radio Service, Inc.,
Taxi Systems, Inc.,
Allcomm Wireless, Inc.,
Electrocom, Inc.,
Telecom Network, Inc.,
General Communications Systems, Inc.,
Wireless Solutions,
DW Communications, Inc.
Applied Technology Group, Inc.,
John Mitchell Company,
Collins Communications,
Rayfield Communications, Inc.,
Technical Electronics, Inc.
Reed Enterprises,
Tri-State Communications,
Mobilcomm, Inc.

Texas Office of Public Utility Counsel The Consumer Federation of America Consumers Union	
AOL/Time-Warner Telecom	AOL/Time-Warner
Universal Service Administrative Company, The	USAC
United States Telecom Association	USTA
VarTec Telecom, Inc.	VarTec
Verestar, Inc.	Verestar **(late filed, rec'd 7/2)**
Verizon	
Verizon Wireless	
Western Kentucky University	
West Virginia Consumer Advocate	
WorldCom, Inc.	WorldCom
Z-Tel Communications, Inc. Z-Tel	

Reply Commenter	**Abbreviation**
American Public Communications Council, The	APCC
AOL Time Warner, Inc.	
Arch Wireless, Inc.	Arch Wireless
Association of Communications Enterprises, The	ASCENT
AT&T Corp.	AT&T
BellSouth Corporation	Bell South
BT North America, Inc.	BT
Cable & Wireless USA	Cable & Wireless
California Public Utilities Commission and the People of the State of California	CPUC * **filed late on 8/2/01**

Cbeyond Communications, LLC	Cbeyond
Cellular Telecommunications & Internet Association	CTIA
Center for Digital Democracy	CDD
Cingular Wireless LLC	Cingular
Competitive Telecommunications Association	CompTel
Dobson Communications Corporation	Dobson
iBasis, Inc.	iBasis
Level 3 Communications, LLC	Level 3
Loral Space & Communications Ltd.	Loral
National Exchange Carrier Association, The	NECA
National Cable & Telecommunications Association, The	NCTA
Office on Advocacy of the United States Small Business Administration, The	SBA
Personal Communications Industry Association, The	PCIA
Qwest Communications International, Inc.	Qwest
SBC Communications, Inc.	SBC
Sprint Corporation	Sprint
Telstar International, Inc.	Telstar
Teltronic, Inc.,	26 De Minimis Carriers
ERC Communications,	
Huffman Communications,	
South Plains Communications,	
Mobile Relays, Inc.,	
Megahertz Technology, Inc.	
Electrocomm – Michigan, Inc.	
Net Wave Communications, Inc.	
Two Way Radio Services, Inc.	
Taxi Systems, Inc.	
T.W.R. Communications	
Taxi Equipment Company, Inc.	
Allcomm Wireless, Inc.	
Electrocom, Inc.	
Telecom Network, Inc.	
General Communications Systems, Inc.	
Wireless Solutions,	
DW Communications, Inc.,	
Applied Technology Group, Inc.	
John Mitchell Company,	
Collins Communications,	
Rayfield Communications, Inc.	
Technical Electronics, Inc.	
Reed Enterprises,	
Tri-State Communications,	
Mobilcomm, Inc.	
Texas Office of Public Utility Counsel, The Consumer Federation of America and Consumer Union	
United States Telecom Association, The	USTA

Universal Service Administrative Company	USAC
Verizon Wireless	
Verizon Telephone Companies, The	Verizon
Verestar, Inc.	Verestar
WorldCom, Inc.	WorldCom
Z-Tel Communications, Inc.	Z-Tel

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Federal-State Joint Board on Universal Service et al., CC Docket Nos. 96-45 et al.

I write separately to underscore my support for this *Further Notice* and to express the urgency with which I feel we must move forward in this proceeding.

In light of market trends such as the overall decline in interstate revenues and the bundling of services, this *Further Notice* seeks additional comment on how we might reform the system of assessment and recovery of universal service contributions to ensure that this system remains equitable and nondiscriminatory, as the statute demands. The questions we ask in this item cover a wide range of approaches, including whether to assess contributions on carriers based on the number and capacity of connections they provide to customers, rather than on the interstate revenues they earn.

But the urgency for making progress arises not from the specific proposals upon which we seek comment, but from the pressing need to adopt *some* reform by which we can exert more discipline over the manner in which carriers pass on their contributions to consumers. At present, carriers have flexibility – some would say too much – over how they recover costs from their customers This fact has led some consumers and policymakers to level strong accusations that carriers are charging too much, are concentrating such recovery on customers with the fewest competitive choices, or are otherwise abusing their entitlement to recovery. This has caused considerable consumer frustration and led some consumers to question unnecessarily the value and fairness of the universal service programs mandated by the Act.

Thus, delay in completion of this proceeding also would delay benefits to consumers and to the viability of universal service that will accrue once we take steps to make assessment and recovery more justifiable and sustainable. If I were persuaded that the infirmities of the current system could not be corrected in a way that is equitable and nondiscriminatory among contributing carriers, I would not feel the same urgency to move forward in this proceeding. But luckily, there are a number of approaches upon which we seek comment in this *Notice* that I believe may cure these infirmities. And so I strongly encourage participants in this proceeding to help the Commission complete this important task.

In the meantime, I would remind carriers choosing to recover their contributions from end users that the Commission is not without authority to prosecute abuses of such recovery. At a minimum, section 201(b) of the Act requires that all rates, terms and conditions of common carrier service are just and reasonable, and I believe that requirement extends to carriers' use of line items to recover universal service contributions. I therefore ask carriers to be mindful of such requirements as we strive to finalize reform of the universal service contribution system.

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: *Federal-State Joint Board on Universal Service*, Further Notice of Proposed Rulemaking and Report and Order, CC Docket No. 96-45 et al.

I am pleased to join in approving this item, which seeks comment on proposals to alter our universal service contribution methodology. Maintaining the stability of the universal service contribution system is one of the Commission's most important responsibilities. Congress codified this responsibility in section 254 of the Telecommunications Act of 1996, which requires the Commission to, among other things, ensure there are specific, predictable, and sufficient support mechanisms to preserve and advance universal service. *See* 47 U.S.C. § 254(b)(5). I am firmly committed to carrying out this directive and to fulfilling Congress' goals of ensuring affordable telecommunications services and access to advanced services in all regions of the nation. *See id.* § 254(b).

To fulfill this responsibility, the Commission today issues a notice reevaluating the contribution methodology. As consumers migrate to new products and services, we may need new methods for assessing universal service contributions. Accordingly, I welcome consideration of novel and different proposals of how to assess universal service contributions.

While we consider these comprehensive reforms, however, I believe it may be important to take some immediate steps. For example, AT&T has complained that assessing contribution obligations on past revenues, as the system currently does, unfairly penalizes carriers with declining revenues and unfairly benefits those with increasing revenues. I believe we should take action on AT&T's waiver request, which seeks to allow AT&T to pay its contributions based on projected rather than past revenue. Whether we make changes along these lines or some other alterations to the current system, I believe some short term adjustments may be warranted.

I also wish to highlight one issue for comment. In weighing the various proposals, we must make sure that "[a]ll providers of telecommunications services . . . make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254(b)(4). We must also follow the Court of Appeals for the Fifth Circuit's holding that the Communications Act prohibits the Commission from assessing contributions on intrastate revenue. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999). I thus think it is crucial that parties comment on how the different proposals comply with both of these limitations.

Finally, I wish to emphasize the importance of participation by the states in this proceeding. We welcome comments from the state commissions, and we have committed to seeking input from the Universal Service Joint Board before making any

significant changes to the contribution methodology. I am confident that we could do so in a manner that does not cause any unnecessary delay.