number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[303] The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

34. *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 a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[304] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[305] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.[306] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[307] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[308] Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[309]

35. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[310] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

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[303] 13 C.F.R. § 121.201, NAICS code 517212.

[304] *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997).

[305] *Id.* at 11068, para. 291.

[306] *See* Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from A. Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

[307] *See generally* Public Notice, "220 MHz Service Auction Closes," 14 FCC Rcd 605 (1998).

[308] *See, e.g.*, Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," 14 FCC Rcd 1085 (1999).

[309] Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," 14 FCC Rcd 11218 (1999).

[310] 47 C.F.R. § 90.814(b)(1).

36. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[311] A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[312] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[313]

37. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[314] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[315] The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[316] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

38. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[317] We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.[318] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

39. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[319] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately

[311] *See* Service Rules for the 746-764 MHz Bands, and Revisions to part 27 of the Commission's Rules, WT Docket No. 99-168, Second Report and Order, 65 FR 17599 (Apr. 4, 2000).

[312] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Oct. 23, 1998).

[313] Public Notice, "700 MHz Guard Band Auction Closes," DA 01-478 (rel. Feb. 22, 2001).

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

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

[316] 13 C.F.R. § 121.201, NAICS code 517212.

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

[318] 13 C.F.R. § 121.201, NAICS codes 517212.

[319] 13 C.F.R. § 121.201, NAICS code 517212.

712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[320] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

40. *Fixed Microwave Services.* Fixed microwave services include common carrier,[321] private operational-fixed,[322] and broadcast auxiliary radio services.[323] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.[324] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

41. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[325] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size

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

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

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

[323] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[324] 13 C.F.R. § 121.201, NAICS code 517212.

[325] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 C.F.R. §§ 22.1001-22.1037.

standard for "Cellular and Other Wireless Telecommunications" services.[326] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[327]

42. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[328] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[329] The SBA has approved these small business size standards.[330] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

43. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[331] In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years.[332] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts.[333] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[334] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[335] Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

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[326] 13 C.F.R. § 121.201, NAICS code 517212.

[327] *Id.*

[328] See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, Report and Order, 63 Fed. Reg. 6079 (Feb. 6, 1998).

[329] *Id.*

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

[331] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[332] 47 C.F.R. § 21.961(b)(1).

[333] 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[334] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)", Table 4, NAICS code 513220 (issued October 2000).

[335] In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small

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44. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[336] The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[337] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[338] The SBA has approved these small business size standards in the context of LMDS auctions.[339] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

45. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[340] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[341] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[342] These size standards will be used in future auctions of 218-219 MHz spectrum.

46. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no

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governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

[336] *See Local Multipoint Distribution Service*, Second Report and Order, 12 FCC Rcd 12545 (1997).

[337] Id.

[338] *See id.*

[339] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[340] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 59 Fed. Reg. 24947 (May 13, 1994).

[341] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 Fed. Reg. 59656 (Nov. 3, 1999).

[342] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 Fed. Reg. 59656 (Nov. 3, 1999).

more than 1,500 persons.[343] We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[344] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

47. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million.[345] "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[346] The SBA has approved these small business size standards.[347] These size standards will apply to the future auction, if held.

4. Cable and OVS Operators

48. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material."[348] The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts.[349] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[350] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[351] Thus, under this size standard, the majority of firms can be considered small.

49. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[352] Industry data indicate that, of

[343] 13 C.F.R. § 121.201, NAICS code 517212.

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

[345] Amendments to Parts 1,2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

[346] Amendments to Parts 1,2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Report and Order, 15 FCC Rcd 16934, 16967 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

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

[348] U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[349] 13 C.F.R. § 121.201, NAICS code 517510.

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

[351] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[352] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

1,076 cable operators nationwide, all but eleven are small under this size standard.[353] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[354] Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.[355] Thus, under this second size standard, most cable systems are small.

50. *Cable System Operators*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[356] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[357] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[358] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[359] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

51. *Open Video Services*. Open Video Service (OVS) systems provide subscription services.[360] As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.[361] This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[362] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

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

[354] 47 C.F.R. § 76.901(c).

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

[356] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[357] 47 C.F.R. § 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

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

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

[360] *See* 47 U.S.C. § 573.

[361] 13 C.F.R. § 121.201, NAICS code 517510.

[362] *See* <http://www.fcc.gov/csb/ovs/csovscer.html> (current as of March 2002).

5. Internet Service Providers

52. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity."[363] Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less.[364] According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.[365] Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

6. Other Internet-Related Entities

53. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users."[366] The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts.[367] According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.[368] Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

54. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily ... provid[e] infrastructure for hosting or data processing services."[369] The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts.[370] According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.[371] Of these, 6,418 had annual receipts of under $10 million, and an additional

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[363] U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers"; http://www.census.gov/epcd/naics02/def/NDEF518.HTM.

[364] 13 C.F.R. § 121.201, NAICS code 518111.

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

[366] U.S. Census Bureau, "2002 NAICS Definitions: 518112 Web Search Portals"; http://www.census.gov/epcd/naics02/def/NDEF518.HTM.

[367] 13 C.F.R. § 121.201, NAICS code 518112.

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

[369] U.S. Census Bureau, "2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services"; http://www.census.gov/epcd/naics02/def/NDEF518.HTM.

[370] 13 C.F.R. § 121.201, NAICS code 518210.

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

251 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

55. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)."[372] Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts.[373] According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.[374] Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

56. *Internet Publishing and Broadcasting.* "This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast."[375] The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.[376] According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.[377] Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms small entities that may be affected by our action.

57. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users.[378] The SBA has developed a small business size standard of $23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services.[379] For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year.[380] Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24, 999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate

[372] U.S. Census Bureau, "2002 NAICS Definitions: 519190 All Other Information Services"; http://www.census.gov/epcd/naics02/def/NDEF519.HTM.

[373] 13 C.F.R. § 121.201, NAICS code 519190.

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

[375] U.S. Census Bureau, "2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting"; http://www.census.gov/epcd/naics02/def/NDEF516.HTM.

[376] 13 C.F.R. § 121.201, NAICS code 516110.

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

[378] *See* U.S. Census Bureau, "2002 NAICS Definitions: 511210 Software Publishers"; http://www.census.gov/epcd/naics02/def/NDEF511.HTM.

[379] 13 C.F.R. § 121.201, NAICS codes 511210, 541511, and 541519.

[380] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 511210 (issued Nov. 2005).

that there were 32,269 firms that operated for the entire year.[381] Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year.[382] Of these, 6,187 had annual receipts of under $10 million, and an additional 101 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

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

58. As discussed in detail in the Order,[383] the modifications to the reporting system only expand the scope of entities that are required to report to include interconnected VoIP service providers. Under the modified reporting system, contributors will continue to report projected and historical revenues on Form 499-Q and their annual revenues on the Form 499-A. Failure to file the required form by the applicable deadline, or failure to file accurate information on the form, could subject a contributor to enforcement action.[384] In addition, we note that we retain the requirement for an officer to certify to the truthfulness and accuracy of the Form 499 submitted to USAC. To ensure that contributors report correct information, we also require all contributors to maintain records and documentation to justify the information reported in the Form 499, and to provide such records and documentation to the Commission and to USAC upon request.

59. Our action today raises the wireless safe harbor and imposes new USF contribution obligations on interconnected VoIP providers. We note, however, that neither wireless providers nor interconnected VoIP providers are required to use the safe harbors established in this order; they have the additional options of basing their contributions on actual interstate and international revenues, or of relying on a traffic study. We emphasize once again that the interim actions adopted in the Order are necessary to ensure that all interstate telecommunications carriers and providers of telecommunications contribute, on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service.

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

60. 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

[381] U.S. Census Bureau, 2002 Economic Census, Subject Series: Professional, Scientific, and Technical Services, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 541511 (issued Nov. 2005).

[382] U.S. Census Bureau, 2002 Economic Census, Subject Series: Professional, Scientific, and Technical Services, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 541519 (issued Nov. 2005).

[383] *See* Order, *supra*, at paras. 60-62.

[384] *See id.* n.189.

than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[385]

61. With respect to wireless providers, the Commission considered and rejected setting the interim safe harbor higher than the 37.1 percent established in this Order.[386] Similarly, the Commission considered and rejected a requirement that interconnected VoIP providers contribute on 100 percent of their end-user revenues.[387] Thus both wireless and interconnected VoIP providers – especially smaller entities – benefit from being able to use a lower safe harbor to report their interstate and international end-user revenues.

62. The Commission's application of the *de minimis* exception to interconnected VoIP providers remains the best means of minimizing the impact on small entities of adopting our interim changes to USF contribution methodology. The *de minimis* exception protects small businesses and ensures that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. As noted by several commenters, the *de minimis* exemption is critical to curtailing the potential administrative costs of contributing for small entities.[388]

F. Report to Congress

63. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[389] In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the Federal Register.[390]

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[385] 5 U.S.C. § 603(c)(1) – (c)(4).

[386] *See* Order, *supra*, at para. 28.

[387] *See* Order, *supra*, at para. 53.

[388] *See, e.g.*, ITA Reply Comments at 6-7; NECA Comments at 7-8; Teletouch Comments at 10.

[389] *See* 5 U.S.C. § 801(a)(1)(A).

[390] *See* 5 U.S.C. § 604(b).

APPENDIX F

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[391] the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (NPRM). 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 NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[392] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[393]

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

2. In the NPRM, we seek to further refine the record concerning the interim requirements established in the accompanying Order for mobile wireless providers and for interconnected VoIP providers, while we continue to examine more fundamental contribution methodology reform. In the Order, we increased the interim wireless safe harbor from 28.5 percent to 37.1 percent to reflect more accurately actual wireless interstate usage.[394] We also require providers of interconnected VoIP service to contribute to the Universal Service Fund (USF or Fund).[395] These actions are necessary to ensure the stability and sufficiency of the Fund. The objective of the NPRM is to explore whether the Commission should take additional action to meet these goals.[396]

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201, 202, 218-220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201, 202, 218-220, 254, and 303(r), and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200-1.1216, of the Commission's rules, 47 C.F.R. §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, 1.1200-1.1216.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.[397] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and

[391] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

[392] *See* 5 U.S.C. § 603(a).

[393] *See id.*

[394] *See* Order, *supra*, at para. 23; *see also* TracFone June 14, 2005 *Ex Parte* Letter, Attach. 2 at 13.

[395] *See* Order, *supra*, at para. 34.

[396] *See* IRFA section D, *infra*.

[397] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

"small governmental jurisdiction."[398] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[399] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[400] The present NPRM might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be directly affected by our action.

5. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[401]

6. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[402]

7. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[403] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[404] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[405] Thus, we estimate that most governmental jurisdictions are small.

8. We have described and estimated the number of small entities to which the proposed rules might apply in the FRFA, *supra*, and hereby incorporate by reference those descriptions here.

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

9. The NPRM addresses required USF contribution levels; these levels, plus associated routine reporting requirements,[406] constitute compliance burdens. The NPRM seeks comment, first, on whether to eliminate or raise the interim wireless safe harbor. The NPRM asks whether mobile wireless providers can, or should be able to, determine their actual interstate and international end-user revenues. If we decide to eliminate the wireless safe harbor, the NPRM seeks comment on how mobile wireless providers would determine their actual usage and whether we should continue to permit wireless providers to use

[398] 5 U.S.C. § 601(6).

[399] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

[400] 15 U.S.C. § 632.

[401] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

[402] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[403] 5 U.S.C. § 601(5).

[404] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[405] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[406] *See* 47 C.F.R. §§ 54.706-54.713.

traffic studies. For example, the NPRM seeks comment on whether originating and terminating Numbering Plan Areas (NPAs) reflect whether a call is interstate or international. The NPRM also seeks comment on whether originating and terminating cell sites could be used to determine the jurisdictional nature of a call. The NPRM asks commenters to address associated difficulties and costs of implementation. The NPRM also seeks comment on whether there are unique difficulties associated with analyzing either outgoing or incoming calls, and whether it is necessary to analyze both types of calls or would, for example, out-bound calls reasonably approximate all interstate and international usage.

10. If we decide to retain a wireless safe harbor, the NPRM seeks comment on whether the new interim safe harbor of 37.1 percent for interstate and international end-user revenue is appropriate or whether the safe harbor should be raised. Given that mobile wireless providers retain the option of reporting their actual interstate end-user telecommunications revenues, we have found that setting the interim safe harbor at the high end of the market for interstate and international end-user revenue is a reasonable approach. The NPRM asks whether a safe harbor of 37.1 percent reflects a reasonable approximation of the high end of wireless interstate and international end-user usage today, and if not, what percentage does. Since 1998, the Commission has increased the interim wireless safe harbor twice to reflect more accurately wireless interstate end-user revenue. We are mindful that these increases in the safe harbor percentage lagged market conditions, resulting in collecting fewer Fund contributions than market conditions would have supported. The NPRM seeks comment on how to determine the safe harbor percentage to better reflect market conditions on an ongoing basis, and on whether the Commission should periodically (*e.g.*, annually, quarterly) adjust the interim safe harbor percentage to reflect wireless interstate end-user revenue trends.

11. The NPRM also seeks comment on the USF obligations we have established in the Order for interconnected VoIP providers. We encourage commenters to describe possible ways in which our new requirements for interconnected VoIP providers could be improved. Given the interim nature of this order, we welcome suggestions for a permanent approach to USF contributions from interconnected VoIP providers.

12. In particular, the NPRM seeks comment on whether to eliminate or change the interim safe harbor established in the Order for providers of interconnected VoIP service. Commenters are asked to address whether a safe harbor continues to be appropriate for providers of interconnected VoIP service, and whether providers of interconnected VoIP service can identify the amount of actual interstate and international, as opposed to intrastate, telecommunications they provide. If so, the NPRM asks whether these providers should be required to report based on actual data. If not, the NPRM seeks comment on whether 64.9 percent is the most appropriate level, or whether we should adjust the interim interconnected VoIP safe harbor. The NPRM asks that commenters advocating a change to the safe harbor explain the basis of their proposed revised safe harbor and how the safe harbor should be calculated.

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

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[407]

[407] 5 U.S.C. § 603(c).

14. The NPRM specifically seeks comment on whether the Commission should revise the USF obligations established for interconnected VoIP providers.[408] In addition, the NPRM seeks comment on the appropriateness of the interim safe harbors established for wireless carriers and interconnected VoIP providers.[409] We seek comment here on the effect the various proposals summarized above will have on small entities, and on what effect alternative rules would have on those entities. How can the Commission achieve its goal of ensuring the stability and sufficiency of the Fund while also imposing minimal burdens on small entities? What specific steps could the Commission take in this regard?

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

15. None.

[408] *See* NPRM, *supra*, para. 68.

[409] *See* NPRM, *supra*, para. 69.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: Universal Service Contribution Methodology (WC Docket No. 06-122); Federal-State Joint Board on Universal Service (CC Docket No. 96-45); 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98-171); Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90-571);
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size (CC Docket No. 92-237; NSD File No. L-00-72); Number Resource Optimization (CC Docket No. 99-200);
Telephone Number Portability (CC Docket No. 95-116); Truth-in-Billing and Billing Format (CC Docket No. 98-170); IP-Enabled Services (WC Docket No. 04-36)

Maintaining the stability of the universal service contribution system is one of the Commission's most important responsibilities. We take an interim step today to ensure the stability of the fund by raising the wireless safe harbor and broadening the contribution base to include interconnected VoIP providers. We take these actions because we recognize the changing telecommunications marketplace.

First, for the first time in nearly four years, we raise the mobile wireless safe harbor from 28.5 to 37.1%. We find that, given the tremendous growth of wireless communications, the current safe harbor no longer accurately reflects the extent to which wireless consumers utilize their wireless phones for interstate calls. This is true particularly in light of the increased substitution of wireless for traditional wireline service. Of course, wireless providers will continue to have the option to contribute to the fund based on traffic studies that serve as a proxy for their actual interstate telecommunications service revenues rather than contribute based on the safe harbor.

Second, we require interconnected VoIP providers to contribute to the fund. Like wireless services, consumers are increasingly using interconnected VoIP services as a substitute for traditional wireline service. And, many of these VoIP providers claim that their services are "inherently interstate." Thus, we could require these providers to pay based on 100% percent of their revenues. Instead, we only require them to contribute based on a safe harbor of 64.9% - the percentage of interstate revenues reported by wireline toll providers. Similar to the options available to wireless providers, interconnected VoIP providers may choose instead to contribute based on their actual interstate revenues or use a traffic study as proxy for these revenues.

As the item recognizes, by requiring interconnected VoIP providers to contribute to the fund, the Commission is furthering the principle of competitive neutrality. This principle of competitive neutrality has guided the Commission's universal service policies over the past decade. It requires us to ensure that our universal service rules do not unfairly favor nor disfavor one technology over another, or unfairly advantage or disadvantage one provider over another. Like public safety goals, universal service obligations transcend new technologies and cannot be compromised.

The preservation and advancement of universal service depend on the Commission's ability to respond effectively to the ever-evolving telecommunications marketplace. Today's order recognizes the increasing use of wireless and VoIP services by consumers and adjusts the Commission universal services rules accordingly. Thus, the actions we take today ensure that the contribution base reflects the current market realities. And, at the same time, our actions ensure that universal service contributions remain equitable and nondiscriminatory.

Although today's item should ensure the stability and sufficiency of the universal service support system, it is just an interim step. I still believe that this system needs fundamental reform, and I remain committed to adopting and implementing a numbers-based contribution system. Accordingly, our work in this area is far from complete. I look forward to working with my colleagues to preserve the values of universal service.

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

Re: *In the Matter of Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; and IP-Enabled Services,* Report and Order and Notice of Proposed Rulemaking (WC Docket No. 06-122, CC Docket Nos. 96-45 98-171, 90-571, 92-237 NSD File No. L-00-72, 99-200, 95-116, 98-170, and WC Docket No. 04-36)

Nothing is closer to the heart of the Telecommunications Act than universal service. It's the very life-blood of the Act—a clear national commitment to bring the best, most accessible and cost-effective communications services to all Americans—no matter who they are or where they live. No matter whether they live in city or town, work in the factory or on the farm or in Indian Country, whether they are affluent or economically disadvantaged, or if they are healthy or are part of our nation's several disabilities communities—every citizen has a right to communications services. And if they are denied access to the advanced communications services now becoming available, they will be left behind. The rest of the world is not going to wait, for example, for rural America to catch up. Rural America's kids will either have these tools or they will lose in the global competition—it's about as simple as that. And they will lose also for lack of the tools they need to fulfill themselves and become fully productive members of our society.

The Order before us today takes some important steps towards shoring up the financial stability of the universal service fund. It does so by raising the wireless safe harbor contribution, by requiring interconnected VoIP providers to contribute to the fund, and by increasing the FCC's ability to ensure that providers are accurately and completely reporting their universal service obligations. I support and approve these steps.

But the outcome isn't all good. Today's actions need to be understood in a broader context, because universal service needs to be seen whole. Last August the Commission put in motion a process to exempt DSL from contributing to the support of universal service. There were other options available to us that would have been more in keeping, I believe, with Section 254 of the Communications Act which charges the Commission with implementing policies that promote the "preservation and advancement of universal service." And more in keeping, I would add, with Section 706 of the Telecommunications Act which charges the FCC to encourage the deployment of advanced telecommunications capability to all Americans.

In the century just past, we got universal service about right for plain old telephone service. Those who were serving the more affluent and profitable markets were charged with the responsibility to contribute towards the provision of reasonably comparable service in more difficult telecom markets. It worked. Now, as we march blithely into the twenty-first century with all its wonderful new telecommunications technologies and services, we reverse course. DSL and cable broadband—which are surely going to be the backbone of our nation's telecom infrastructure for years to come—can build where they choose and profit as they can without contributing towards making these services available to harder-to-reach people. It's like taking the broadband out of a broadband strategy—except that the country lacks such a strategy.

In reviewing the record, I noted with interest the National Telecommunications Cooperative Association letter stating that the elimination of broadband providers' contributions to the fund "will undermine the . . . goal of providing affordable broadband services to all Americans by 2007, and conflict directly with . . . Telecom Rewrite legislation . . . which ties the future of universal service to broadband deployment throughout the United States."

At a somewhat more granular level, I think the jury may still be out on whether today's action actually puts enough additional funds into the universal service fund as DSL's non-participation takes out. By some accounts DSL providers contribute $350 million a year to the fund, perhaps more. Recall that last summer, when the Commission announced its broadband recusal approach, we pledged to "take ***whatever action is necessary*** to preserve existing funding levels" (emphasis added) before releasing providers from their contribution obligations. I don't see with slam-dunk certainty that contributions from interconnected VoIP (which is, for all its impressive growth, still a relatively nascent industry) and from wireless carriers (whose possibly increased use of traffic studies could lead to unforeseen consequences) offset the funds lost by DSL's non-participation. Surely it would be an intolerable result to end up with the fund having less revenue, not more, for the foreseeable future. Last summer we pledged this result would not happen. Nine months later we seem to accept the possibility of a diminished fund.

Finally I would note that concerns have been expressed by wireless and VoIP providers that their respective safe harbors were not appropriately set. We all know the importance of well-developed, analytical fact-gathering, research and study, and to the extent that comments to today's Notice of Proposed Rulemaking support adjustments to these safe harbors or provide better ways to calculate them, the Commission should conform its policies expeditiously.

In sum, I approve in part and concur in part for the reasons discussed above, and I remain hopeful that a universal service system for the twenty-first century will yet emerge from the dialogues that currently attend not only our proceedings but also the deliberations of Congress as the people's representatives contemplate our nation's needs in the years ahead.

SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
Approving in Part, Concurring in Part

Re: Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Numbering Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services; WC Docket No. 06-122, CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92-237, CC Docket No. 99-200, CC Docket No. 95-116, CC Docket No. 98-170, WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking (June 21, 2006).

My commitment to universal service is based on the fundamental belief that a chain is only as strong as its weakest link. Our universal service programs strengthen the links in our communications network. The Commission is charged under Section 254 of the Act with establishing "specific, predictable, and sufficient" support mechanisms to preserve and advance universal service. I support this Order because we take steps here, by increasing the safe harbor for wireless carriers and including interconnected VoIP providers in the contribution base, that are consistent with our obligation to keep universal service on solid footing.

I concur in part to this Order, however, because I am concerned that we leave unanswered important questions about our long-term approach for the foundation of these vital programs. Congress clearly contemplated that our universal service programs would evolve as technology evolves, and it is paramount that the Commission not undercut the role that universal service and our communications systems will play in the future of Rural Americans, low income citizens, and our nation's schools and libraries.

Universal service has been the bedrock telecommunications policy of the past seventy years. Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. Universal service has played an important role in stimulating and maintaining the high levels of penetration that our country now enjoys, with benefits for all users of the network, no matter where they live.

Given these benefits, it is not surprising that Congress enshrined the principles of keeping our communities connected and ensuring that the latest advanced communications services reach all Americans in the Telecommunications Act of 1996. In the 1996 Act, Congress reaffirmed its commitment to connectivity for rural America and for low income consumers, but also made important additions to our universal service framework. Through the addition of the Schools and Libraries program, we have opened a world of new learning and opportunity for millions of school children and library patrons. In addition, the funding made possible through our Rural Health Care program has been crucial to the sustainability of many telemedicine programs and this program holds enormous potential to improve the quality of life in rural America.

To ensure continued success, we must remain committed to providing specific, predictable and sufficient support mechanisms based on equitable and non-discriminatory contributions. For that reason, I support our decision to increase the wireless carrier safe harbor so that it may better reflect the industry's level of interstate revenues. I also support the inclusion of interconnected VoIP services which

are increasingly viewed by consumers as a replacement for traditional analog voice services.

To their credit, many wireless carriers and interconnected VoIP providers have acknowledged the need to contribute to the universal service support mechanisms. At the same time, I have heard concerns about how the Commission implements its specific contribution provisions. So, I was pleased that this Order continues to allow carriers a choice by preserving their ability to calculate their actual interstate revenues, use traffic studies, or use a safe harbor mechanism. I also support our decision to adopt a simultaneous NPRM, through which we seek comment on whether to further refine several technical issues related to the use of safe harbors and traffic studies, if changes are appropriate.

One overarching question that is largely unaddressed in this Order, however, is how our universal service contribution policies should evolve as we move into the broadband age. As we upgrade our nation's communications networks to provide broadband functionality and advanced communications services, our children will rely on and integrate communications tools into their lives in ways that we are only beginning to see. Last August, the Commission embarked on an uncharted path by reclassifying broadband Internet access services as information services, outside the framework of our traditional Title II authority. Nowhere is this path more murky than in the case of universal service, where reclassifying these services removes their revenues from the mandatory contribution requirements of section 254. At the time of the reclassification, the Commission adopted a transitional mechanism to stabilize funding for universal service support and made an extraordinary commitment to preserve and advance universal service. Those provisions in the Broadband Reclassification Order were critical to my support of the item.

I fully support the efforts to expand the contribution base in today's Order but, as we edge toward the close of the Commission's interim contribution plan, there remain important unanswered questions. Despite the best efforts of our talented staff, it is difficult to forecast the precise impact of the measures we adopt today on overall contributions. Indeed, this Order makes no definitive findings about what level of contributions will be recovered through these changes. This Order also does not attempt to analyze the extent of the Commission's decision last August on the overall revenues available for universal service purposes. It is clear, however, that exempting broadband Internet access revenues would remove a sizable and rapidly-growing segment of the telecommunications sector from the contribution base. That Congress contemplated that our universal service mechanisms would evolve as technology evolves is certainly evidenced in the broad permissive authority it gave the Commission to expand the contribution base. As I said at the time of the reclassification, I would have preferred to exercise our permissive contribution authority to address this potential decline in the contribution base permanently. For these same reasons, I concur in part to this item, which preserves a status quo with respect to universal service that strikes me as inconsistent with the intent of Congress and an evolving level of universal service.

Although the Commission has not yet reached a decision on this larger issue, I remain committed to universal service and look forward to working with my colleagues to ensure that we take the appropriate steps to ensure that universal service remains on solid footing and that contributions are made on an equitable and nondiscriminatory basis. Working together, we can further strengthen the program and ensure that it continues the positive strides that it has already made.

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

Re: Universal Service Contribution Methodology, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking.

In 1996, to ensure the long-standing Commission policies of universal service, Congress required that every telecommunications carrier that provides interstate telecommunications service to contribute to universal service on an equitable and non-discriminatory basis. Congress also permitted the Commission to require contributions from other providers of telecommunications for the advancement and preservation of universal service. Even today, as Congress contemplates revisions to the Act, universal service goals remain integral to their discussions. Today's item takes a positive step toward realizing the universal service goals in the Act by ensuring that services are treated in a technology-neutral manner under the Commission's contribution rules.

In today's item, we clarify our rules to ensure that universal service obligations are shared fairly across similar services. It was not long ago that discussions of VoIP in the marketplace were mostly hypothetical. However, with current estimates showing residential VoIP serving over 4 million subscribers and growing rapidly, the marketplace reality is knocking at our door. Given the rapid marketplace adoption of VoIP, I am pleased that we make universal service obligations clear at an early stage so that we avoid unnecessary market distortion. While I continue to advocate a light regulatory touch for nascent services like VoIP, it is essential that important goals like universal service are implemented in an equitable and non-discriminatory manner.

The Commission currently assesses universal service contribution obligations based on a percentage of a provider's interstate revenues. While the Commission has consistently made clear that it continues to prefer actual revenues, the Commission has made available other means to estimate interstate revenues, like safe harbors, to reduce burdens on providers. Underneath all of the details of today's interim decision is a core principle that all providers subject to universal service contribution obligations contribute fairly based on an account of their interstate revenues. I look forward to evaluating comments from consumers, industry, and other interested parties as we further develop a record on this issue.

Finally, we must remember that we are taking these actions because all consumers should be able to access services at reasonable rates and I remain committed to encouraging the deployment of new services to Americans in underserved regions. That is important to all consumers because, from the bustling streets of our biggest cites to the most remote native villages in Alaska, hundreds of miles from the nearest paved road, we all rely on a common communications network to keep our families, friends, and businesses connected as a nation. Through our collective support, we will continue to stay connected and moving forward as a nation.

STATEMENT OF COMMISSIONER ROBERT M. MCDOWELL

Re: *Universal Service Contribution Methodology, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking.*

Universal Service is premised upon the noble concept that every American, whether low-income, or in rural, insular, or high cost areas, should have access to the same kinds of affordable telecommunications services as those available in urban America.[1] From generations of Americans living on family farms, to Native Alaskans in subsistence villages, to school children in small towns along America's gulf coast, the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life.

However, this system is in dire need of comprehensive reform. Today's action is simply an interim measure that will help bridge the gap between the deteriorating status quo and a fairer and more sustainable system for the future. I look forward to working with my colleagues as we move forward quickly on a more comprehensive reform effort.

Today, we adopt interim changes to the Universal Service contribution methodology that are fair and reasonable. By setting appropriate safe harbors and allowing wireless carriers and VoIP providers, in determining their USF contribution, the option of either using such safe harbor, utilizing traffic studies, or reporting actual interstate revenues, we provide the right balance of administrative ease and incentive to contribute based on actual interstate and international revenues. These interim measures also ensure that the fund remains solvent for the near term and serve as an important first step toward broadening the fund's contribution base to ensure equitable and nondiscriminatory support[2] of the Fund in an increasingly digital world.

I thank Tom Navin and the Wireline Competition Bureau staff for their hard work and the Chairman for his leadership in this matter. I look forward to working with my colleagues to follow the Chairman's lead as he drives the process of comprehensive reform to ensure long term sustainability of Universal Service.

[1] 47 U.S.C. § 254(b)(3).

[2] *See* 47 U.S.C. § 254(b)(4).