

there were 87,525 local governmental jurisdictions in the United States.<sup>15</sup> We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."<sup>16</sup> Thus, we estimate that most governmental jurisdictions are small.

6. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report.<sup>17</sup> The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,<sup>18</sup> Paging,<sup>19</sup> and Cellular and Other Wireless Telecommunications.<sup>20</sup> Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>21</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>22</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

#### 1. Wireline Carriers and Service Providers

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent

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<sup>15</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

<sup>16</sup> 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.*

<sup>17</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, page 5-5 (February 2007) (*Trends in Telephone Service*). This source uses data collected as of October 20, 2005.

<sup>18</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>19</sup> *Id.* § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>20</sup> *Id.* § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>21</sup> 5 U.S.C. § 601(3).

<sup>22</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>23</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>24</sup> We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers (ILECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>25</sup> According to Commission data,<sup>26</sup> 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

10. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> According to Commission data,<sup>28</sup> 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees.<sup>29</sup> In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our action.

11. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has

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<sup>23</sup> 15 U.S.C. § 632.

<sup>24</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (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).

<sup>25</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>26</sup> *Trends in Telephone Service* at Table 5.3.

<sup>27</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>28</sup> *Trends in Telephone Service* at Table 5.3.

<sup>29</sup> *Id.*

1,500 or fewer employees.<sup>30</sup> According to Commission data,<sup>31</sup> 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>32</sup> According to Commission data,<sup>33</sup> 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> According to Commission data,<sup>35</sup> 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>36</sup> According to Commission data,<sup>37</sup> 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees.<sup>38</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

15. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate

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<sup>30</sup> 13 C.F.R. § 121.201, NAICS code 517310 (This category will be changed for purposes of the 2007 Census to NAICS code 517911.).

<sup>31</sup> *Trends in Telephone Service* at Table 5.3.

<sup>32</sup> 13 C.F.R. § 121.201, NAICS code 517310 (This category will be changed for purposes of the 2007 Census to NAICS code 517911.).

<sup>33</sup> *Trends in Telephone Service* at Table 5.3.

<sup>34</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>35</sup> *Trends in Telephone Service* at Table 5.3.

<sup>36</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>37</sup> *Trends in Telephone Service* at Table 5.3.

<sup>38</sup> *Id.*

size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>39</sup> According to Commission data,<sup>40</sup> 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>41</sup> According to Commission data,<sup>42</sup> 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

17. *800 and 800-Like Service Subscribers.*<sup>43</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>44</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>45</sup> According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

## 2. Wireless Carriers and Service Providers

18. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily

<sup>39</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>40</sup> *Trends in Telephone Service* at Table 5.3.

<sup>41</sup> 13 C.F.R. § 121.201, NAICS code 517310 (This category will be changed for purposes of the 2007 Census to NAICS code 517911.).

<sup>42</sup> *Trends in Telephone Service* at Table 5.3.

<sup>43</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>44</sup> 13 C.F.R. § 121.201, NAICS code 517310 (This category will be changed for purposes of the 2007 Census to NAICS code 517911.).

<sup>45</sup> *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

19. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"<sup>46</sup> Cellular and Other Wireless Telecommunications."<sup>47</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>48</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>49</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>50</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>51</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

20. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications."<sup>52</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.<sup>53</sup> We have estimated that 221 of these are small, under the SBA small business size standard.<sup>54</sup> Thus, under this category and size standard, about half of firms can be considered small. This information is also included in paragraph 23.

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<sup>46</sup> 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>47</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>48</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517211 (issued Nov. 2005).

<sup>49</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>50</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms for the United States: 2002, NAICS code 517212 (issued Nov. 2005).

<sup>51</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>53</sup> *Trends in Telephone Service* at Table 5.3.

<sup>54</sup> *Id.*

21. *Common Carrier Paging.* The SBA has developed a small business size standard for *Paging, under which a business is small if it has 1,500 or fewer employees.*<sup>55</sup> According to Commission data,<sup>56</sup> 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>57</sup> A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>58</sup> The SBA has approved these small business size standards.<sup>59</sup> An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>60</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

22. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.<sup>61</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications”

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<sup>55</sup> 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

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

<sup>57</sup> *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (*220 MHz Third Report and Order*).

<sup>58</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>59</sup> *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

<sup>60</sup> *Id.* at 10085, para. 98.

<sup>61</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

services.<sup>62</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>63</sup> According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.<sup>64</sup> We have estimated that 221 of these are small under the SBA small business size standard.

24. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>65</sup> For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>66</sup> These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.<sup>67</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>68</sup> On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

25. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has

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<sup>62</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>63</sup> *Id.*

<sup>64</sup> *Trends in Telephone Service* at Table 5.3.

<sup>65</sup> *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 61 FR 33859 (July 1, 1996); *see also* 47 C.F.R. § 24.720(b).

<sup>66</sup> *Id.*

<sup>67</sup> *See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

<sup>68</sup> FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997). *See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.<sup>69</sup> A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.<sup>70</sup> In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

26. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.<sup>71</sup> The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

27. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>72</sup> 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.<sup>73</sup> 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

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<sup>69</sup> *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

<sup>70</sup> See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

<sup>71</sup> 13 C.F.R. § 121.201, NAICS code 517212.

<sup>72</sup> *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, at paras. 291-95.

<sup>73</sup> *Id.* at 11068-70, para. 291.

standards.<sup>74</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>75</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>76</sup>

28. *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.<sup>77</sup> 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.

29. *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.<sup>78</sup> 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.<sup>79</sup> 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,

<sup>74</sup> See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>75</sup> See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

<sup>76</sup> *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

<sup>77</sup> 47 C.F.R. § 90.814(b)(1).

<sup>78</sup> See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

<sup>79</sup> See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

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.<sup>80</sup>

30. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>81</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>82</sup> 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.<sup>83</sup> 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.

31. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.<sup>84</sup> 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.<sup>85</sup> 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.

32. *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.<sup>86</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with

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<sup>80</sup> 700 MHz Guard Band Auction Closes, Public Notice, 16 FCC Rcd 4590 (2001).

<sup>81</sup> The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

<sup>82</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

<sup>83</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>84</sup> The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

<sup>85</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>86</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>87</sup> 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.

33. *Fixed Microwave Services.* Fixed microwave services include common carrier,<sup>88</sup> private operational-fixed,<sup>89</sup> and broadcast auxiliary radio services.<sup>90</sup> 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.<sup>91</sup> The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

34. *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.<sup>92</sup> 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

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<sup>87</sup> *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).

<sup>88</sup> 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).

<sup>89</sup> Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>90</sup> 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.

<sup>91</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

<sup>92</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

business size standard for “Cellular and Other Wireless Telecommunications” services.<sup>93</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>94</sup>

35. *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.<sup>95</sup> 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.<sup>96</sup> The SBA has approved these small business size standards.<sup>97</sup> The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

36. *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).<sup>98</sup> 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.<sup>99</sup> 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 \$13.5 million or less in annual receipts.<sup>100</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>101</sup> 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.<sup>102</sup> Consequently, we estimate that the majority of providers in this service

<sup>93</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>94</sup> *Id.*

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

<sup>96</sup> *Id.*

<sup>97</sup> *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).*

<sup>98</sup> *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 at para. 7 (1995).

<sup>99</sup> 47 C.F.R. § 21.961(b)(1).

<sup>100</sup> 13 C.F.R. § 121.201, NAICS code 517510.

<sup>101</sup> 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).

<sup>102</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

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.<sup>103</sup> Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

37. *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.<sup>104</sup> 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.<sup>105</sup> 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 \$13.5 million for the preceding three calendar years.<sup>106</sup> The SBA has approved these small business size standards in the context of LMDS auctions.<sup>107</sup> 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. The license terms require the licensees to build their wireless facilities within ten years of the grant. As a result, more information on the licensees will become available in the year 2008, when the licensees are required to show the Commission that they have achieved substantial service as part of the application renewal process.

38. *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.<sup>108</sup> In the *218-219 MHz Report and Order and Memorandum Opinion and*

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<sup>103</sup> In addition, the term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

<sup>104</sup> See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, 12 FCC Rcd 12545 (1997).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>108</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

*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.<sup>109</sup> 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.<sup>110</sup> These size standards will be used in future auctions of 218-219 MHz spectrum.

39. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.<sup>111</sup> We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>112</sup> 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.

40. *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.<sup>113</sup> “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.<sup>114</sup> The SBA has approved these small business size standards.<sup>115</sup> These size standards will apply to the future auction, if held.

### 3. Satellite Service Providers

41. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of “Satellite

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<sup>109</sup> *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

<sup>110</sup> *Id.*

<sup>111</sup> 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to “Wireless Telecommunications Carriers (except Satellite),” NAICS code 517210.).

<sup>112</sup> 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.

<sup>113</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

<sup>114</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

<sup>115</sup> *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).

Telecommunications” and “Other Telecommunications.” Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.<sup>116</sup>

42. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>117</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>118</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>119</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

43. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”<sup>120</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>121</sup> Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>122</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

#### 4. Cable and OVS Operators

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

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<sup>116</sup> 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

<sup>117</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>118</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>119</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>120</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>121</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>122</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

45. *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."<sup>123</sup> 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.<sup>124</sup> According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.<sup>125</sup> 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.<sup>126</sup> Thus, under this size standard, the majority of firms can be considered small.

46. *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.<sup>127</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>128</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>129</sup> 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.<sup>130</sup> Thus, under this second size standard, most cable systems are small.

47. *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."<sup>131</sup> The Commission has determined that an operator serving fewer than 677,000

<sup>123</sup> U.S. Census Bureau, 2002 NAICS Definitions, "517510 Cable and Other Program Distribution"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>124</sup> 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to "Wired Telecommunications Carriers," NAICS code 517110.).

<sup>125</sup> 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).

<sup>126</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>127</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>128</sup> 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.

<sup>129</sup> 47 C.F.R. § 76.901(c).

<sup>130</sup> 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.

<sup>131</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>132</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>133</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>134</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

48. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.<sup>135</sup> As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.<sup>136</sup> This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.<sup>137</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

## 5. Electric Power Generation, Transmission and Distribution

49. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: "This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."<sup>138</sup> The SBA has developed a small business size standard for firms in this category: "A firm is small if, including its affiliates, it is

<sup>132</sup> 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

<sup>133</sup> 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.

<sup>134</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

<sup>135</sup> See 47 U.S.C. § 573.

<sup>136</sup> 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to "Wired Telecommunications Carriers," NAICS code 517110.).

<sup>137</sup> See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

<sup>138</sup> U.S. Census Bureau, 2002 NAICS Definitions, "2211 Electric Power Generation, Transmission and Distribution"; <http://www.census.gov/epcd/naics02/def/NDEF221.HTM>.

primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”<sup>139</sup>

According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.<sup>140</sup> Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

## 6. Internet Service Providers

50. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”<sup>141</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.<sup>142</sup> According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.<sup>143</sup> 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.

## 7. Other Internet-Related Entities

51. *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.”<sup>144</sup> The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in

<sup>139</sup> 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, footnote 1.

<sup>140</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122 (issued Nov. 2005).

<sup>141</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>142</sup> 13 C.F.R. § 121.201, NAICS code 518111. This category will be changed, for purposes of the 2007 Census, to “Wired Telecommunications Carriers,” NAICS code 517110, for broadband Internet service providers (e.g., cable, DSL), and to “All Other Telecommunications,” NAICS code 517919, for Internet service providers providing services via client-supplied telecommunications connections.

<sup>143</sup> 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).

<sup>144</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

average annual receipts.<sup>145</sup> According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.<sup>146</sup> Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

52. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”<sup>147</sup> The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.<sup>148</sup> According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.<sup>149</sup> Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

53. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”<sup>150</sup> 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.<sup>151</sup> According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.<sup>152</sup> Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

54. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”<sup>153</sup> The

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<sup>145</sup> 13 C.F.R. § 121.201, NAICS code 518112 (This category will be changed for purposes of the 2007 Census to “Internet Publishing and Broadcasting and Web Search Portals,” NAICS code 519130.).

<sup>146</sup> 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).

<sup>147</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>148</sup> 13 C.F.R. § 121.201, NAICS code 518210.

<sup>149</sup> 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).

<sup>150</sup> U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

<sup>151</sup> 13 C.F.R. § 121.201, NAICS code 519190.

<sup>152</sup> 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).

<sup>153</sup> U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.<sup>154</sup> According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.<sup>155</sup> 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.

55. *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.<sup>156</sup> 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.<sup>157</sup> For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year.<sup>158</sup> 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 that there were 32,269 firms that operated for the entire year.<sup>159</sup> 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.<sup>160</sup> 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**

56. In the Notice, many of the proposals to increase our understanding of broadband availability would impose no reporting, recordkeeping or other compliance requirements on small entities. However, we invite comment on several other proposals that would impose further reporting

<sup>154</sup> 13 C.F.R. § 121.201, NAICS code 516110. (This category will be changed for purposes of the 2007 Census to "Internet Publishing and Broadcasting and Web Search Portals," NAICS code 519130.).

<sup>155</sup> 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).

<sup>156</sup> See U.S. Census Bureau, "2002 NAICS Definitions: 511210 Software Publishers"; <http://www.census.gov/epcd/naics02/def/NDEF511.HTM>.

<sup>157</sup> 13 C.F.R. § 121.201, NAICS codes 511210, 541511, and 541519.

<sup>158</sup> 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).

<sup>159</sup> 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).

<sup>160</sup> 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).

and recordkeeping requirements on current Form 477 filers. Specifically, the Notice invites comment on whether current Form 477 filers should (1) report numbers of subscribers per 5-digit Zip Code, (2) report 9-digit Zip Codes where there is at least one subscriber or report numbers of subscribers per 9-digit Zip Code, (3) report geocoded information about subscriber locations, or (4) report information that delineates in detail the boundaries of their broadband-enabled service territories.<sup>161</sup> The Notice also seeks comment on whether the Commission should (1) refine the speed tier information the Commission currently collects by splitting an existing speed tier into two;<sup>162</sup> (2) require all broadband filers to report the number of residential customers served and also the number of homes “passed” by their broadband enabled infrastructure;<sup>163</sup> (3) collect demographic information about households from filers located in representative areas;<sup>164</sup> and (4) collect price information from filers in representative areas or from filers more generally.<sup>165</sup> In addition, we invite comment whether there are any alternatives not discussed in the Notice that would also serve the objectives of the Notice.<sup>166</sup> We invite comment on ways to mitigate the burden that might be imposed on small entities by proposals discussed in the Notice.<sup>167</sup> We also invite comment on alternatives to these proposals that would meet the objectives of the Notice but would impose lesser burdens on small entities.

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

57. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>168</sup>

58. From the outset, the Notice invites comments on significant alternatives to improving data about broadband availability throughout the nation – particularly availability in rural and other hard-to-serve areas – that would impose no burden on small entities whatsoever. These alternatives ask whether the Commission would be able to meet its objectives by conducting further analysis of current data, conducting its own studies, or purchasing databases from other entities to supplement Commission data. The Notice asks whether the Commission should simply identify for further,

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<sup>161</sup> See Notice at section III.B.

<sup>162</sup> See Notice at para. 18.

<sup>163</sup> See Notice at para. 28.

<sup>164</sup> See Notice at para. 40-41.

<sup>165</sup> See Notice at para. 45-46.

<sup>166</sup> See Notice at para. 38.

<sup>167</sup> See Notice at para. 24; *see id.* at section III.

<sup>168</sup> 5 U.S.C. § 603(c).

individual study those Zip Code areas where deployment appears to be particularly limited.<sup>169</sup> The Notice invites comment on whether the Commission might collaborate with state public-private economic development or other initiatives to supplement and refine Commission data.<sup>170</sup> Furthermore, the Notice invites comment whether it might purchase commercial databases or services that would provide data without imposing additional burdens on filers.<sup>171</sup> Finally, the Commission inquires whether it might rely on a voluntary self-reporting system by non-served households, patterned after the National Do-Not-Call Registry, to identify localized areas where broadband services are not available.<sup>172</sup> None of these alternatives would impose burdens on small entities, but commenters are invited to comment on whether these alternatives would provide sufficient information for the Commission to assess whether it should institute new policies to encourage deployment of broadband services to rural and hard-to-serve areas.

59. With regard to proposals that would increase the reporting requirements of small entities, the Notice invites comments on how these proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable the Commission to determine whether subscribers in those territories have access to broadband services.<sup>173</sup> As noted above, the Notice invites comment on whether current Form 477 filers should (1) report numbers of subscribers per 5-digit Zip Code, (2) report 9-digit Zip Codes where there is at least one subscriber or report numbers of subscribers per 9-digit Zip Code, (3) report geocoded information about subscriber locations, or (4) report information that delineates in detail the boundaries of their broadband-enabled service territories.<sup>174</sup> The Notice also seeks comment on whether the Commission should (1) refine the speed tier information the Commission currently collects by splitting an existing speed tier into two;<sup>175</sup> (2) require all broadband filers to report the number of residential customers served and also the number of homes "passed" by their broadband enabled infrastructure;<sup>176</sup> (3) collect demographic information about households from filers located in representative areas;<sup>177</sup> and (4) collect price information from filers in representative areas or from filers more generally.<sup>178</sup> To analyze the impact on small entities, the Notice specifically asks whether entities maintain these types of information in billing or marketing databases and asks commenters to demonstrate the burden for the entities to collect and report this type

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<sup>169</sup> See Notice at para. 25.

<sup>170</sup> See Notice at para. 26.

<sup>171</sup> See Notice at para. 32.

<sup>172</sup> See Notice at para. 34. We note that some of these subscribers might be small entities, and we also note that it would be impossible to define the universe of small entities that might use broadband services. However, because these subscribers would benefit from a self-reporting process and because such a process would be voluntary, we believe that any burden in reporting on an FCC website would be minimal at best.

<sup>173</sup> See Notice at para. 24.

<sup>174</sup> See Notice at section III.B.

<sup>175</sup> See Notice at para. 18.

<sup>176</sup> See Notice at para. 28.

<sup>177</sup> See Notice at para. 40-41.

<sup>178</sup> See Notice at para. 45-46.

of information. This information will assist the Commission in determining whether these various proposals would impose a significant economic impact on small entities. Commenters are invited to comment on whether there are alternative methods that would obtain the same information while lessening the economic impact on small entities.

60. The Notice also invites comment on how we should modify the reporting requirements for wireless broadband providers and interconnected VoIP providers. Specifically, the Notice invites comment on whether mobile wireless providers should (1) report the number of month-to-month (or longer term) subscriptions to broadband Internet access service designed for full Internet browsing; (2) report the number of month-to-month (or longer term) subscriptions for broadband-speed browsing of customized-for-mobile web sites; and (3) report the number of unique mobile voice service subscribers who are not month-to-month subscribers to an Internet access service, but who nevertheless made any news, video, or other entertainment downloads to the subscriber's handset at broadband speed during the month preceding the Form 477 reporting date.<sup>179</sup> The Notice also seeks comment on how to improve the reporting estimate of the percentage of mobile wireless broadband subscribers who are residential end users.<sup>180</sup> In doing so, the Notice specifically suggests and seeks comment on alternative methods for arriving at the best estimates of residential end users. Finally, the Notice specifically invites comment on how to collect useful information about the number of interconnected VoIP subscribers in the least burdensome manner.<sup>181</sup> This information will assist the Commission in determining whether these various proposals would impose a significant economic impact on small entities. Commenters are invited to comment on whether there are alternative methods that would obtain the same information while lessening the economic impact on small entities.

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

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

62. None.

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<sup>179</sup> See Notice at para. 22.

<sup>180</sup> See Notice at section III.A.2.

<sup>181</sup> See Notice at para. 22.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

- Re: In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership (WC Docket No. 07-38)*
- Re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (GN Docket No. 07-45)*

The United States is the largest broadband market in the world with over 56 million broadband subscribers according to the Organization for Economic Cooperation and Development (OECD). Encouraging the deployment of affordable broadband services to all Americans is a top priority of mine and of the Commission. I am proud of the progress we have made in broadband deployment by creating an environment that better facilitates infrastructure investment.

Since I arrived at the Commission in July 2001, high speed lines in the U.S. have gone from 9 million to nearly 65 million. According to the Commission's most recent data, high-speed connections increased by 26% in the first half of 2006 and by 52% from June 2005 to June 2006.

A recent independent study by Pew confirmed this trend, finding that from March 2005 to March 2006, overall broadband adoption increased by 40% – from 60 to 84 million – twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39%). Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics. For example, broadband adoption grew by more than 120% among African Americans and grew by almost 70% among middle-income households (those with incomes between \$40,000 and \$50,000 per year).

The Pew data also confirms that the price of broadband service has dropped in the past two years. Specifically, the Pew Report found that between February 2004 and December 2005, the average price for high-speed service declined from \$39 per month to \$36 per month. Currently, Verizon and Comcast each offer promotional broadband packages for \$19.99 per month, for example, and AT&T has committed to providing new retail broadband customers a \$10 a month broadband Internet access service throughout the combined region.

While we have made progress recently, as I have said before, there is more we can do. For example, the Commission is committed to obtaining the best information possible about the deployment, access, and affordability of broadband services nationwide. Last year for instance, for the first time we began reporting information regarding different speeds of broadband connections (e.g., about services offered at speeds in excess of 200 kbps).

The Broadband Data NPRM we adopt today will allow the Commission to gain an even better picture of broadband deployment in this country. The Notice asks questions about how we can obtain more specific information about broadband deployment and consumer acceptance in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources.

*By improving our data collection, we will be able to identify more precisely those areas of the country where additional broadband deployment is needed.*

We also launch today our fifth inquiry into “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” 47 U.S.C. §157 nt. In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. In particular, we seek comment on whether, given the evolution of technology and the marketplace, we should redefine the term “advanced services” to require higher minimum speeds.

Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market. We have already taken some steps to improve the information we collect and report, but the items we adopt today will provide additional important progress towards our goal of universal affordable broadband access for Americans.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*

For several years now, I have been greatly disappointed by the Commission's broadband data-gathering and presentation. As scholars, industry and the Government Accountability Office (GAO) have documented, our semi-annual statistical reports currently fail to measure even basic concepts such as the extent of broadband deployment across the country (including in rural and tribal areas) and the degree of competition among broadband providers and modalities. Our statistical methodology seems almost calculated to obscure just how far our country is falling behind many other industrialized nations in broadband availability, adoption, speed and price. Indeed, the lack of reliable government data on the present state of our broadband market is a fundamental obstacle to developing a national strategy to reverse our inexcusable broadband performance. Until we know where we stand today, how can we possibly build the broadband future that our nation deserves? And if the FCC doesn't gather this data, who will?

Today's NPRM asks a number of important questions that will allow the FCC to begin reforming its broadband data-gathering. An item like this should have been voted ten years ago. But we take what we can get, and I appreciate Chairman Martin's willingness to work with us to develop a series of questions that will allow the Commission to develop a far more nuanced and reliable picture of our nation's broadband market. I look forward to working with him and my fellow Commissioners to synthesize the comments we receive over the coming months so we can develop rules that will improve our semi-annual broadband statistical reports as well as our section 706 broadband analysis.

Though today's item asks a multitude of important questions—too many to mention here—I would like to focus on certain issues that I believe are of particular importance. First, today's item seeks comment on how the agency should measure broadband speed. For too long, we have defined broadband as 200 kbps in one direction—a measure that was outdated even when it was introduced years ago and that has become increasingly untenable today, especially when one considers what consumers in other countries routinely expect and receive. I look forward to receiving comments on how we can develop more useful measures of speed and also how we can ensure that broadband providers are using comparable methodologies for calculating speed.

Second, today's item states that competitive choice should, ideally, be calculated on a house-by-house and business-by-business basis. It also forthrightly acknowledges the limitations of the Commission's existing methodology, which assumes if one home or business in a ZIP code has broadband, then every home or business in that ZIP code has broadband. No business in its right mind would base decisions on such misleading data—surely the American government should not do so either. I am especially pleased that we seek comment on the feasibility of developing a sampling methodology to develop estimates of competition and broadband deployment in representative urban, suburban, rural, and tribal areas and on using statistical extrapolation to develop a national picture. The groundbreaking mapping and analysis conducted by private-public partnerships like ConnectKentucky—not to mention the example of countries like Japan, which gathers detailed data at the prefecture level—certainly demonstrate that it is possible, with a little elbow grease, to gather far more granular broadband data than we presently do at the FCC. A pretty good idea of what's going on in representative parts of the country strikes me as a far better basis for policy than a largely misleading idea of what's happening everywhere.

Third, today's item seeks information on broadband price—a crucially important piece of information in understanding broadband deployment and in assessing whether consumers are being well served by our current broadband market. After all, it is surely *value*—meaning the relationship between price and measures of quality such as speed and ease of use—that matters most to consumers and ought to matter most to the Commission. I am especially interested in learning how price and value are affected by the degree of competition in an area. We should be able to report the price per bit in representative parts of the country, and to compare these statistics to what consumers receive in other nations. The Commission has for many years considered such factors in its annual analyses of, for instance, video and wireless services—it is well past time that we do so for broadband as well.

Fourth, building upon the point just made, today's item distinguishes between two distinct concepts—whether broadband is *available* and whether consumers have chosen to *adopt* broadband—that the Commission has conflated for far too long.<sup>1</sup> Gathering statistics on both concepts—as well as how the two are correlated with price, speed, value and demographic factors such as age, gender, education, race, income, rural and tribal residence, disability status, and so forth—will allow the Commission, other policymakers, academics, and industry to understand why certain populations have benefited far less than others from the digital revolution. Only when we understand the many factors driving broadband adoption can we ensure that the benefits of this exciting technology become a part of *every* American's life—as they surely should be.

Finally, today's item seeks comment on how we can use international statistics on broadband deployment to better understand and assess our own country's broadband marketplace. Even though our country is undeniably unique in many ways, lessons from abroad may well be relevant to our own situation and we should always have the humility to learn from others.

Despite our late start, today's item nevertheless represents an important step in the right direction. I hope that it represents an ongoing commitment on the part of this agency to improve our data-gathering and presentation. I also hope it isn't too late.

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<sup>1</sup> See, e.g., United States GAO, *Broadband Deployment Is Extensive Throughout the United States, but it Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas*, GAO-06-426 (May 2006).

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, Notice of Proposed Rulemaking (2007)*

The Commission must collect accurate and reliable data concerning the status of broadband deployment, availability, affordability, and competition, if we are to adopt effective policies that promote access to broadband services, our charge under the Telecommunications Act of 1996. Too often, I hear complaints about the lack of accurate, comprehensive, and granular broadband data and the quality of the FCC's data gathering efforts. It is the FCC's job to fill in the many blanks. With this *Notice*, the Commission has the opportunity to correct well documented short-comings in our data gathering program that have hamstrung our ability to collect the data necessary for sound policymaking. While it has been a long time coming, we will now have the opportunity to make some welcome improvements after years of foot-dragging.

Given the increasing importance of broadband to our economy and quality of life, we must engage in a concerted and coordinated effort to restore our place as the world leader in telecommunications by making affordable broadband available to all our citizens. To accomplish this task, we must be willing to take a hard look at our successes and failures, and improve our data collection. Having a comprehensive, reliable, and accurate understanding about the state of broadband deployment is the critical first step in a comprehensive effort to promote the availability of broadband services to all Americans.

Yet, the Commission's current efforts to gauge broadband deployment, access, and affordability fall far short. In its May 2006 report, the Government Accountability Office (GAO) took the FCC to task for the quality of its broadband data. GAO criticized the Commission's ability to analyze who is getting broadband and where it is deployed, observing that the FCC's data "may not provide a highly accurate depiction of deployment of broadband infrastructures for residential service, especially in rural areas." GAO's report makes clear that the FCC has much work to do to improve the quality and scope of its broadband data, as well as its analysis of the availability of affordable broadband services, if it is to satisfy the Congressional mandate in Section 706.

Through this *Notice*, the Commission takes a first step toward a better data gathering and analytical process. The *Notice* seeks comment on whether to alter the Commission's existing definition of broadband, how to collect additional demographic information about broadband subscribers, and how to collect and analyze data on the cost of residential broadband services. To maintain our productivity edge, we must give our citizens communications tools that are equal or greater than those available to our global competitors. We should start by updating our current definition of high-speed of just 200 kbps in one direction to something more akin to what consumers receive in countries with which we compete, speeds that are magnitudes higher than our current definitions. We need to set ambitious goals, shooting for real high-bandwidth broadband deployment, rather than being content to hit targets set almost eight years ago. Particularly given the growing evidence that citizens of other countries are getting a much greater broadband value, in terms of cost per megabit, the Commission must also explore ways to monitor the actual speeds and prices available to American consumers who are capable of obtaining

broadband services. Similarly, the *Notice* seeks comment on how to collect data on broadband availability and affordability in other nations.

Particularly important, the *Notice* also seeks comment on how to better assess broadband availability. As GAO has made clear, the Commission's current practice of basing conclusions about availability on providers' lists of Zip Codes in which they serve at least one customer does not provide sufficient information about the actual deployment of broadband networks, its practical availability for consumers, or the state of competition in given areas. In this regard, I am pleased that the *Notice* seeks comment on how to gather data about broadband deployment, availability, and adoption among Native Americans living on tribal lands. The Commission must explore ways to develop greater granularity in its assessment and analysis of broadband availability, whether through statistical sampling, Census Bureau surveys, or other means. If we are to make sure that all Americans benefit from broadband services, the Commission must do more to assess broadband availability and affordability across our many diverse populations. So, I appreciate my colleagues' willingness to expand the scope of questions raised in this *Notice* and am hopeful that it will provide a record that will allow us to significantly enhance the Commission's data gathering efforts into the status of broadband deployment, availability, and affordability.

Given that the most glaring weaknesses in our data gathering efforts have been well-known for some time, it is disappointing that the Commission only seeks comment on these changes, even as we simultaneously launch an inquiry which will form the basis of our next Section 706 Report to Congress. Our timing suggests that the Commission may not have a revised data gathering program in place in time to better inform our next report. I hope that prediction is wrong because these efforts would enhance the ability of the Commission and Congress to understand the availability of affordable broadband and to target policy efforts accordingly. We should do whatever we can to make sure that we have all the facts before we are required to make the next round of conclusions.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

- Re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*
- Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*

As a state official, I witnessed first-hand the incredible impact broadband networks and services have on real communities and families across Tennessee. From watching our state become the first to connect every school to the Internet, to celebrating the 10<sup>th</sup> anniversary of the E-rate program, I've seen how millions of children all across this country are benefiting in ways we never dreamed possible before. From Appalachia to Alaska, I have also seen the impact of broadband services to improve the quality and availability of health care services to more Americans, particularly those in the most rural and isolated communities. Pockets of incredible stories, uses, and innovative projects abound, but we need to do more in order to ensure that *all* Americans enjoy the benefits that broadband can bring.

While a state member of the Federal-State Joint Conference on Advanced Telecommunications Services, I encouraged the Commission to do more, and am now pleased that we are doing just that. Congress charged us with regularly inquiring into the availability of advanced telecommunications capability to all Americans and, through this proceeding, we are fulfilling our obligation. But, more importantly, we will be providing information to CEOs deciding where to locate a new business, to consumers seeking e-learning, and to healthcare providers sharing medical records to better coordinate patient care. I also hope this will enable us to showcase some of the most innovative and exciting public-private initiatives across the country and serve as a clearinghouse for local officials, businesses, providers, and consumers seeking to bring all the opportunities and promise that broadband provides to their communities.

Meeting the goal of providing broadband to this vast and geographically challenging country will not be easy. It cannot and should not be up to government alone. But with American ingenuity, corporate commitment, the promise of new jobs to economically depressed areas, and reduced healthcare costs, we all can be part of the solution. We must be in order to continue our role of global leadership and to ensure that we prepare, educate, and provide the tools necessary for tomorrow's innovators.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

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

*Re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, GN Docket No. 07-45*

By adopting these two items, we are taking important steps to update and refine the Commission's efforts to determine the current state of broadband deployment in the U.S., including the market, investment and technological trends of advanced telecommunications capabilities. In the *Data Collection Notice of Proposed Rulemaking*, we seek comment on how we can further refine our information collection on broadband deployment to more accurately reflect service to rural areas and to include advanced wireless technologies. In the *Section 706 Notice of Inquiry*, we expect to receive comments that will focus our understanding of how to define advanced telecommunications capability, the status of deployment of broadband capability to all Americans, the reasonableness and timeliness of the current level of deployment, and what actions can or should be taken to accelerate deployment. I look forward to receiving the comments in both of these proceedings as part of the Commission's ongoing effort to continue to increase the rate of broadband penetration and foster more choices for all types of consumers. We should continue to seize every opportunity to move America forward in this important area.