

58. We find that the approach adopted in today's Order best balances the costs of information collection and the public interest benefits of more detailed information on broadband deployment.³⁰⁶

Collecting subscriber count information at the *Census Tract level*, as compared to collecting information at the 5-digit or 9-digit ZIP Code level or some other unit, results in a greatly improved understanding of the market for broadband services while imposing a minimum burden on reporting entities.³⁰⁷

Additionally, we offer an alternative format for reporting under which the Commission undergoes the efforts involved with converting service address information to census-based data units.³⁰⁸ While additional information collected by other methods, such as public-private partnerships, self-reporting, and the U.S. Census, can supplement required reporting by service providers, these methods have many limitations and are not sufficient by themselves, and cannot replace existing Form 477 reported information.³⁰⁹

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

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

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

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

³⁰⁷ See section III.A, *supra*.

³⁰⁸ *Id.*

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

³¹⁰ See section III.A, *supra*.

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

³¹² *Id.*

³¹³ See 5 U.S.C. § 801(a)(1)(A).

³¹⁴ See 5 U.S.C. § 604(b).

APPENDIX E**Initial Regulatory Flexibility Analysis**

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

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

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

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1-5, 10, 11, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 160, 161, 201-205, 215, 218-220, 251-271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 nt.

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

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

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

³¹⁶ See 5 U.S.C. § 603(a).

³¹⁷ See 5 U.S.C. § 603(a).

³¹⁸ 5 U.S.C. § 604(a)(3).

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

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

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

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer

³¹⁹ 5 U.S.C. § 601(6).

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

³²¹ 15 U.S.C. § 632.

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

³²³ *Trends in Telephone Service* at Table 5.3.

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

³²⁵ *Trends in Telephone Service* at Table 5.3.

³²⁶ *Id.*

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

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

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

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

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

³²⁷ 5 U.S.C. § 601(3).

³²⁸ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

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

³³⁰ *Trends in Telephone Service* at Table 5.3.

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

³³² *Trends in Telephone Service* at Table 5.3.

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

³³⁴ *Trends in Telephone Service* at Table 5.3.

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

³³⁶ *Trends in Telephone Service* at Table 5.3.

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

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

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

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

1. Wireless Carriers and Service Providers

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

³³⁷ *Id.*

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

³³⁹ *Trends in Telephone Service* at Table 5.3.

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

³⁴¹ *Trends in Telephone Service* at Table 5.3.

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

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

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

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

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

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

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

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

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

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

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

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

³⁵¹ *Trends in Telephone Service* at Table 5.3.

³⁵² *Id.*

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

³⁵⁴ *Trends in Telephone Service* at Table 5.3.

for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁵⁵ A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.³⁵⁶ The SBA has approved these small business size standards.³⁵⁷ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.³⁵⁸ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

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

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

20. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar

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

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

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

³⁵⁸ *Id.* at 10085, para. 98.

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

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

³⁶¹ *Id.*

³⁶² *Trends in Telephone Service* at Table 5.3.

years.³⁶³ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³⁶⁴ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.³⁶⁵ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.³⁶⁶ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

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

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

³⁶⁴ *Id.*

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

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

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

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

22. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.³⁶⁹ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

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

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

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

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

³⁷¹ *Id.* at 11068-70, para. 291.

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

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

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

³⁷⁵ 47 C.F.R. § 90.814(b)(1).

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

25. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁷⁶ A “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.³⁷⁷ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.³⁷⁸

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁸⁷ Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

³⁸⁸ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

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

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

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

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

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

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

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

³⁹² *Id.*

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

³⁹⁴ *Id.*

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

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

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

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

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

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

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

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

³⁹⁹ *Id.*

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

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

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

⁴⁰³ 47 C.F.R. § 21.961(b)(1).

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

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

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

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

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

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

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

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

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

⁴⁰⁹ *Id.*

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

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

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

⁴¹³ *Id.*

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

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

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

2. Satellite Service Providers

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

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

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

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

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

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

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

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

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

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

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

capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”⁴²⁴

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

3. Cable and OVS Operators

42. In 2007, the SBA recognized new census categories for small cable entities.⁴²⁷ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

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

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

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

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

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

⁴²⁷ 13 C.F.R. § 121.201.

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

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

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

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

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

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

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

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

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

⁴³⁴ 47 C.F.R. § 76.901(c).

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

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

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

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

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

⁴⁴⁰ See 47 U.S.C. § 573.

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

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

4. Electric Power Generation, Transmission and Distribution

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59. None.

⁴⁶³ 5 U.S.C. § 603(c).

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gather it today.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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