APPENDIX B

List of Commenters

WC Docket No. 07-139 (AT&T Inc. Petition)

Commenter	Abbreviation
AT&T Corp.	AT&T
California Public Utilities Commission and People of the State of California	California
Communications Workers of America	CWA
Cincinnati Bell Telephone Company LLC	Cincinnati Bell
Embarq Local Operating Companies	Embarq
Michigan Public Service Commission	Michigan PSC
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of Rate Counsel	New Jersey Rate Counsel
Public Utility Commission of Texas	Texas PUC
United States Telecom Association	USTA

WC Docket No. 07-204 (Petitions filed by Embarq, Frontier, and Qwest)

Commenter	Abbreviation
AT&T Corp.	AT&T
BT Americas Inc.	BT Americas
California Public Utilities Commission and People of the State of California	California
CenturyTel, Inc.	CenturyTel
Colorado Office of Consumer Counsel	Colorado Consumer
Colorado Public Utilities Commission	Colorado PUC
CompTel	CompTel
Embarq Local Operating Companies	Embarq
Frontier and Citizens ILECs	Frontier
Integra Telecommunications, Inc.	
New Jersey Division of Rate Counsel	New Jersey of Rate Counsel
Pennsylvania Public Utility Commission	Pennsylvania PUC
Qwest Corporation	Qwest
Sprint Nextel Corporation	Sprint Nextel
Time Warner Telecom Inc.	Time Warner Telecom
Verizon Communications Inc.	Verizon
Washington Utilities and Transportation Commission	Washington

WC Docket No. 07-273 (Verizon Communications Inc. Petition)

Commenter	Abbreviation
AT&T Corp.	AT&T
AdHoc Telecommunications Users Committee	AdHoc
California Public Utilities Commission and People of the State of California	California
Michigan Public Service Commission	Michigan PSC
New Jersey Division of Rate Counsel	New Jersey Rate Counsel
New York Department of Public Service	New York
Pennsylvania Public Utility Commission	Pennsylvania PUC
Sprint Nextel Corporation	Sprint Nextel
Time Warner Telecom Inc.	Time Warner Telecom
Verizon Communications Inc.	Verizon
Washington Utilities and Transportation Commission	Washington
Wisconsin Public Utilities Commission	Wisconsin PUC

WC Docket No. 07-21 (Request of Verizon and Qwest to Extend Forbearance Relief from Cost Assignment Rules)

Commenter	Abbreviation
Ad Hoc Telecommunications Users Committee	Ad Hoc
Embarq Corporation	Embarq
Frontier Communications	
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of Rate Counsel	New Jersey Rate Counsel
New York State Public Service Commission	New York Commission
Qwest Corporation	Qwest
Sprint Nextel Corporation, COMPTEL, T-Mobile USA, Inc., tw telecom inc.,[1] and One Communications Corp.	Sprint Nextel *et al.*
Verizon Communications Inc.	Verizon

[1] Time Warner Telecom Inc. amended its Certificate of Incorporation effective March 12, 2008 to change its name to tw telecom inc. in preparation for a broader name change that will be effective July 1, 2008. The company continued to use and be known as Time Warner Telecom Inc., its trade name, until July 1, 2008. *See* Sprint Nextel *et al.* Petition for Reconsideration.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] 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 Notice of Proposed Rulemaking (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 Notice provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. In the Notice, the Commission considers whether to implement reporting requirements relating to service quality and infrastructure information. Specifically, the Commission seeks comment on whether to impose reporting requirements previously required through ARMIS Reports 43-05, 43-06, 43-07 and 43-08, or similar requirements. The Commission also seeks comment on the scope of entities that should be required to report such information, if it is collected, and the mechanism for collecting that information. In addition, the Notice seeks comment on the appropriate confidentiality protections for such information. For each of these issues, the Commission also seeks comment on the burdens, including those placed on small entities, associated with possible Commission data collection 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.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as

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[1] *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).

[2] *See* 5 U.S.C. § 603(a).

[3] *See* 5 U.S.C. § 603(a).

[4] 5 U.S.C. § 604(a)(3).

[5] 5 U.S.C. § 601(6).

the term "small business concern" under the Small Business Act.[6] 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).[7]

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.[8] According to Commission data,[9] 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.[10] According to Commission data,[11] 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.[12] 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

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[6] 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."

[7] 15 U.S.C. § 632.

[8] 13 C.F.R. § 121.201, NAICS code 517110.

[9] *Trends in Telephone Service* at Table 5.3.

[10] 13 C.F.R. § 121.201, NAICS code 517110.

[11] *Trends in Telephone Service* at Table 5.3.

[12] *Id.*

employees), and "is not dominant in its field of operation."[13] 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.[14] 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.[15] According to Commission data,[16] 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.[17] According to Commission data,[18] 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.[19] According to Commission data,[20] 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

[13] 5 U.S.C. § 601(3).

[14] 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).

[15] 13 C.F.R. § 121.201, NAICS code 517911.

[16] *Trends in Telephone Service* at Table 5.3.

[17] 13 C.F.R. § 121.201, NAICS code 517911.

[18] *Trends in Telephone Service* at Table 5.3.

[19] 13 C.F.R. § 121.201, NAICS code 517110.

[20] *Trends in Telephone Service* at Table 5.3.

a business is small if it has 1,500 or fewer employees.[21] According to Commission data,[22] 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees.[23] 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.[24] According to Commission data,[25] 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.[26] According to Commission data,[27] 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.*[28] 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.[29] 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.[30] 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

[21] 13 C.F.R. § 121.201, NAICS code 517110.

[22] *Trends in Telephone Service* at Table 5.3.

[23] *Id.*

[24] 13 C.F.R. § 121.201, NAICS code 517110.

[25] *Trends in Telephone Service* at Table 5.3.

[26] 13 C.F.R. § 121.201, NAICS code 517911.

[27] *Trends in Telephone Service* at Table 5.3.

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

[29] 13 C.F.R. § 121.201, NAICS code 517911.

[30] *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

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 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.[31] Because there is not, as yet, much if any data to establish small business size standards for the different categories of wireless firms that fall under this broad, new census category, we will use data gathered under superseded census categories to estimate the relevant size standards. Prior to 2007, 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."[32] 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.[33] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[34] 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.[35] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[36] 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

[31] 13 C.F.R. § 121.201, NAICS code 517210.

[32] 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

[33] 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).

[34] *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."

[35] 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).

[36] *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."

data.[37] We have estimated that 221 of these are small, under the SBA small business size standard.[38] 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 the superseded category of "Paging," under which a business is small if it has 1,500 or fewer employees.[39] According to Commission data,[40] 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[41] 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.[42] The SBA has approved these small business size standards.[43] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[44] 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.[45] The Commission auctioned geographic area licenses in

[37] *Trends in Telephone Service* at Table 5.3.

[38] *Id.*

[39] 13 C.F.R. § 121.201, NAICS code 517211 (This category was changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

[40] *Trends in Telephone Service* at Table 5.3.

[41] *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*).

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

[43] *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).

[44] *Id.* at 10085, para. 98.

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

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 the superseded census category of "Cellular and Other Wireless Telecommunications" services.[46] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[47] According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.[48] 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 years.[49] 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."[50] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[51] 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.[52] 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

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[46] 13 C.F.R. § 121.201, NAICS code 517212.

[47] *Id.*

[48] *Trends in Telephone Service* at Table 5.3.

[49] *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).

[50] *Id.*

[51] *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).

[52] 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).

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*.[53] 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.[54] 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.

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.[55] 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.[56] 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.[57] A "very small business" is an entity that, together

[53] *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).

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

[55] 13 C.F.R. § 121.201, NAICS code 517212.

[56] *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, at paras. 291-95.

[57] *Id.* at 11068-70, para. 291.

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.[58] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[59] 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.[60]

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

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.[62] 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.[63] 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,

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

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

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

[61] 47 C.F.R. § 90.814(b)(1).

[62] *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).

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

2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[64]

26. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[65] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[66] 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.[67] 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.[68] 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.[69] 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 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.[70] 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

[64] *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (2001).

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

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

[67] 13 C.F.R. § 121.201, NAICS code 517210.

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

[69] 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.).

[70] 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.).

interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[71] 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,[72] private operational-fixed,[73] and broadcast auxiliary radio services.[74] 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.[75] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

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.[76] 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

[71] *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).

[72] *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).

[73] 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.

[74] 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.

[75] 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.).

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

standard for "Cellular and Other Wireless Telecommunications" services.[77] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[78]

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.[79] 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.[80] The SBA has approved these small business size standards.[81] 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"),[82] and the Educational Broadband Service ("EBS"), formerly Instructional Television Fixed Service ("ITFS"),[83] to transmit video programming and provide broadband services to residential subscribers.[84] These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.[85] 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

[77] 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.).

[78] *Id.*

[79] *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).

[80] *Id.*

[81] *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).

[82] 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*").

[83] 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.

[84] *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*").

[85] *Id.*

broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[86] 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.[87] Although this census category has been superseded by the new census category of Cable and Other Subscription Programming,[88] we use the size standards under the superseded census category because no standards have been established for the new category. 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,[89] 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.[90] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[91] 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.[92] 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).[93] 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.

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[86] *See* Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997).

[87] 13 C.F.R. § 121.201, NAICS code 517510.

[88] 13 C.F.R. § 121.201, NAICS code 515210.

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

[90] 47 C.F.R. § 21.961(b)(1).

[91] *See ITFS Order*, 10 FCC Rcd at 9589.

[92] 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.

[93] 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.

35. In the 1998 and 1999 LMDS auctions,[94] the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years.[95] 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.[96] These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.[97] 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.[98] 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.[99] 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.[100] 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

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[94] 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.)

[95] *See LMDS Order,* 12 FCC Rcd at 12545.

[96] *Id.*

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

[98] *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).

[99] *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).

[100] *Id.*

more than 1,500 persons.[101] We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[102] 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 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.[103] "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.[104] The SBA has approved these small business size standards.[105] 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 $15 million.[106] 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."[107]

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."[108] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[109] Of this total, 307

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[101] 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.).

[102] 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.

[103] *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).

[104] *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).

[105] *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).

[106] 13 C.F.R. § 121.201, NAICS code 517410 (2007).

[107] 13 C.F.R. § 121.201 , NAICS codes 517919 (size standard of $25 million).

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

[109] 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).

firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[110] 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 capable of transmitting telecommunications to or receiving telecommunications from satellite systems."[111] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[112] 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.[113] 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.[114] 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."[115] 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.[116] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category

[110] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[111] U.S. Census Bureau, 2002 NAICS Definitions, "517910 Other Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[112] 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).

[113] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[114] 13 C.F.R. § 121.201.

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

[116] 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.).

that operated for the entire year.[117] 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.[118] 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 cable company" is one serving 400,000 or fewer subscribers, nationwide.[119] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[120] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[121] 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.[122] 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."[123] 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.[124] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[125] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose

[117] 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).

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

[119] 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).

[120] 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.

[121] 47 C.F.R. § 76.901(c).

[122] 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.

[123] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[124] 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).

[125] 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.

gross annual revenues exceed $250 million,[126] 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.[127] As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.[128] This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.[129] 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."[130] 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."[131] According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.[132] 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.

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[126] 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).

[127] *See* 47 U.S.C. § 573.

[128] 13 C.F.R. § 121.201, NAICS code 517110.

[129] *See* http://www.fcc.gov/mb/ovs/csovscer.html (current as of February 2007).

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

[131] 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, footnote 1.

[132] 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).

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,[133] and (2) All Other Information Services.[134] 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."[135] Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less.[136] According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.[137] 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."[138] 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.[139] According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.[140] 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.

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[133] 13 C.F.R. § 121.201, NAICS code 519130 (establishing 500 employees as a size standard).

[134] 13 C.F.R. § 121.201, NAICS code 519190 (establishing a $7 million revenue ceiling).

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

[136] 13 C.F.R. § 121.201, NAICS code 518210.

[137] 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).

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

[139] 13 C.F.R. § 121.201, NAICS code 518112.

[140] 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).

51. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily ... provid[e] infrastructure for hosting or data processing services."[141] The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts.[142] According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.[143] 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)."[144] 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 SBA has developed a small business size standard for this category; that size standard is $7 million or less in average annual receipts.[145] According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.[146] 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."[147] The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.[148] According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.[149] Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms small entities that may be affected by our action.

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

[142] 13 C.F.R. § 121.201, NAICS code 518210.

[143] 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).

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

[145] 13 C.F.R. § 121.201, NAICS code 519190.

[146] 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).

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

[148] 13 C.F.R. § 121.201, NAICS code 516110.

[149] 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).

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

54. In the Notice, the Commission considers whether to implement certain reporting requirements relating to service quality and infrastructure information. Specifically, the Commission seeks comment on whether to impose certain reporting requirements previously required through ARMIS Reports 43-05, 43-06, 43-07 and 43-08, or similar requirements. In addition, the Notice seeks comment on the appropriate confidentiality protections for such information. The Commission also seeks comment on the scope of entities that should be required to report such information, if it is collected, and the mechanism for collecting that information.

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

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[150]

56. As noted above, the 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 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. Based on these questions, we anticipate that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities.

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

57. None.

[150] 5 U.S.C. § 603(c).

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-139; *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273;*Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21;*Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190

Today, we take another step to remove unnecessary regulatory burdens and ensure a regulatory level playing field. We eliminate outdated reporting requirements that applied to a small class of carriers, retaining only those requirements that still serve a useful regulatory purpose.

And if the Commission does believe specific information is needed in today's competitive marketplace, then we should collect that information from all industry players rather than a handful of carriers. Therefore, we initiate a proceeding to determine whether and how to collect such information across all platforms.

The ARMIS service quality and infrastructure reports adopted almost two decades ago are remnants of legacy regulation on monopoly providers. As competition increased, the need for these safeguards and the utility of these reports diminished. Moreover, their competitors are not required to file the reports. Therefore, even if some information is important to disclose publicly to help inform consumers and ensure an open market, it needs to be provided by all the competitors. Indeed, failure to require all competitive platforms to file the same information would not paint an accurate picture of the industry today. Such information is not useful or reliable unless we obtain it in a uniform manner from providers across all platforms.

I am pleased that we also extend to Verizon and Qwest the cost allocation forbearance relief that we provided AT&T earlier this year. Like the ARMIS service quality and infrastructure reports, these rules have been in effect in one form or another for decades and no longer serve the purpose for which they were imposed. Verizon and Qwest will continue to file price, revenue, and total cost information necessary to achieve the goals of price cap regulation. But we relieve them of the burden of this legacy regulation from a much different era.

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

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-139; *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273;*Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21;*Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190

The collection and analysis of solid communications-related data is a linchpin in the Commission's ability to make sound decisions and provide useful guidance and assistance to consumers, states, industry-participants and other stakeholders. That is why it has been so troubling to see in to many instances the Commission headed down the road of collecting less data. Now we are confronted with forbearance requests by carriers seeking relief from the responsibility of collecting and reporting service quality, customer satisfaction, and infrastructure and operating data pursuant to the Commission's ARMIS reporting rules. Petitioners argue the current data-collection requirements are outdated and that the Commission has failed to complete an NPRM pending for ***eight years*** to determine what data should be collected circa 2008. Thus, they filed forbearance petitions to obtain relief.

There is no good reason for the Commission to have ended up in today's dilemma: incapable of determining with specificity what data collection continues to be important, yet faced with a ticking-clock forbearance deadline that would eliminate ***all*** of the reporting requirements—the good, the bad, and allegedly the ugly—identified by petitioners if the Commission fails to act.

My strong preference would be to deny these petitions outright and provide carriers, through a rulemaking, updated reporting requirements. However, there does not appear to be a majority of support for this position. Rather than having certain ARMIS data that is currently submitted to the FCC disappear into the abyss via forbearance, we reached a compromise with regard to the ARMIS reporting requirements which can keep us from plunging off a cliff. First, the Commission grants covered carriers forbearance from certain ARMIS reporting requirements. Second, forbearance is conditioned on carriers continuing to collect and publicly make available their data on service quality and customer satisfaction for two years. They also must continue to collect infrastructure and operating data for the next two years. Third, we launch a Further Notice of Proposed Rulemaking to, hopefully, accomplish what we have avoided all these years—a reasoned, rational and relevant approach to ensuring that the data necessary for consumers and for state and federal regulators will be available going-forward. While this compromise does create a risk that the aforementioned data will not be available after two years time, it gives the Commission the opportunity to do what it should have done a long time ago, which is to revise and update its reporting requirements.

To ensure that we have at least some ability to access needed data going forward, I approve the

Order's condition that the carriers continue to collect, and in certain cases report, the data provided today for another two years. I also am supportive of the Order's clear statement that the Commission is not in any way preempting state regulatory agencies from obtaining directly from carriers any data they need to perform their regulatory duties. I limit my support of part of this Order to concurrence because the analysis and reasoning relied on to reach the forbearance decision is flawed. In particular, its finding that ARMIS reports in certain circumstances are no longer necessary, too burdensome, or not useful is contrary to the views of numerous commenters, including consumer organizations, state consumer advocates, state public utility commissions, and the Communications Workers of America, among others.

I approve the Notice of Proposed Rulemaking which gives us the opportunity in the next two years to get the job done right. Importantly, the NPRM seeks comment on the type of data collection that will best enable the FCC, and all interested parties, to obtain and analyze the information needed in order to protect consumers and to assure the existence of a competitive telecommunications environment. To the extent that the Commission finds that data collected and publicly available today should continue to be collected, there appears to be every reason for this data to be made publicly available going forward.

Let me be clear: the Commission has a deep and ongoing obligation to gather this type of data so informed decisions can be made when it comes to consumer protection, competition, broadband, and public safety. I believe that today's NPRM sets us on a path so that the Commission can do a better job in the not-so-distant future. It's no slam-dunk we will do so, but I pledge my best efforts to making it come to pass in the months ahead. I encourage all stakeholders to treat this NPRM with the seriousness it merits and to give us the benefit of your best and most creative thinking. With your input, we ***can*** get this job done—and done right.

Finally, but just as importantly, I strongly dissent to the last minute inclusion of cost allocation forbearance relief for Verizon and Qwest. With the statutory deadline looming, this monumental change was first proposed only yesterday afternoon. No Order in connection with the cost allocation forbearance requests was previously circulated for consideration. There is no opportunity to review the relevant records, hear from stakeholders, or consider the merits of these forbearance requests. I therefore must dissent on this basis alone. The inclusion of such a far-reaching decision at this late hour badly distorts a forbearance process that has already gone awry. Furthermore, I am deeply concerned at this time that the grant of forbearance likely raises similar concerns to those I raised with Commissioner Adelstein in our dissent to cost allocation forbearance relief granted AT&T back in April.

For these reasons, I approve in part, concur in part, and dissent in part – a messy vote for a truly messy item.

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

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-139; *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273;*Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21;*Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190

I have long believed that the Commission has a responsibility to collect accurate and reliable data in order to develop effective policies and fulfill Congress's goals for the evolving telecommunications marketplace. Just as an airplane pilot would not land a plane with eyes closed and instruments off, the Commission must ensure that its decision-making is guided by sufficient data. Particularly as telecommunications markets move to a less regulated model, the FCC can also play an important role by providing information directly to consumers that will empower them to choose among competitive carriers.

With so many benefits from the Commission's efforts to collect and share market information, we should be skeptical about proposals to effectively jettison a host of reporting requirements that may help the Commission perform its consumer protection, broadband, competition, and public safety functions. It is certainly true that we must update our rules to respond to changes in the market and technology, as we are required to do regularly by statute. Unfortunately, today's item fails to carefully analyze the current collection program or develop consensus about which of these service quality, customer satisfaction, infrastructure, and operating reporting requirements remain useful, or could be revised, eliminated, or enhanced. Perhaps more troubling, the majority, on the last business day of this fifteen month review process, has taken up entirely new forbearance requests which will cast aside long-standing financial reporting requirements.

To be clear, the prudent course would be to have addressed these reporting requirements with a careful analysis and through an open and inclusive rulemaking proceeding. Yet, we are presented today with a Hobson's choice in the form of a forbearance statute that mandates a "deemed grant" – in this case total elimination of the reporting requirements – if the Commission is unable to reach compromise. Faced with these difficult circumstances, I have attempted to work with my colleagues to forge consensus where possible, with the result that I will approve-in-part, concur-in-part, and dissent-in-part to portions of this item, as described below.

Service Quality, Customer Satisfaction, Infrastructure and Operational Reporting Requirements. With respect to this data, we strike a compromise which, though imperfect, is certainly preferable to a wholesale scrapping of these reporting requirements. State public utility commissions, consumer

advocates, providers, and representatives of communications workers alike have stressed the utility of this data and have urged the Commission to take a more calibrated approach. So, I appreciate my colleagues' willingness to accommodate my desire to explore these issues more fully. Indeed, my support for this item was dependent on the Commission's decision to condition forbearance on the reporting carriers' commitment to continue this data collection for two years, while the Commission considers whether to modify these rules and apply them to a broader class of carriers. Specifically, the Order requires the reporting carriers continue filing this data for two additional years and to continue to publicly report the service quality and customer satisfaction data during this time. These conditions are essential for my support of this item, though I can only concur to the portions of this Order that rely on flawed analysis to conclude that forbearance is appropriate at all.

My support for this item was also dependent on the Commission's decision to open a Notice of Proposed Rulemaking which recognizes that this information may be useful to the Commission and consumers, particularly if collected from a broader range of providers. Notably, eight years ago, the Commission proposed to do exactly that – to revise, pare back, and in some cases, enhance many of these same reporting requirements. Certainly, eight years should have been sufficient time to have addressed this in an ordered fashion. At a minimum, having had fifteen months warning that we would have to address this by today, it is disappointing that the Commission failed to pursue a thoughtful and comprehensive rulemaking process.

Now, faced with this imminent deadline, the Commission pivots to this awkward two step process – forbearing from these reporting requirements, while at the same time seeking comment on whether those same requirements should be applied to all carriers. While this is certainly putting the cart before horse, this compromise is far better than immediate and precipitous elimination of all of the rules. It will give the Commission another opportunity to foster a collaborative approach, to engage State commissions, consumer advocates, carriers, and other interested parties, to narrow the differences, and perhaps to develop consensus. Now that we have this brief window of opportunity, I hope and expect that the Commission and outside parties will engage constructively and creatively in an effort to derive meaningful reporting requirements to be filed by a broader set of industry players that will assist policymakers and consumers. To that end, I'd like to acknowledge the efforts of AT&T and the Communications Workers of America to develop commitments that form the basis of this Order. That should be an encouraging sign as we move on to the next phase of this proceeding.

Financial Reporting Requirements. In a surprise conclusion to this proceeding, the Commission also grants two additional forbearance requests from our financial reporting requirements. Adding these new sections of the Order on the last business day cuts short outside parties' opportunity to make their views heard and denies all Commissioners the opportunity to gain the benefit of this input. This cavalier approach to the forbearance process is disappointing given the many concerns that have already been raised by Congress.

Even setting those concerns aside, elimination of these cost assignment and allocation rules undermines the Commission's ability to promote competition, consumer confidence, investor security, and the public interest, as Commissioner Copps and I detailed in our joint statement earlier this year.[1] It

[1] See Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein, Dissenting, *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules,Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342; Memorandum Opinion and Order (April 24, 2008).

diminishes our ability to meet our statutory obligation to ensure that telecommunications services are offered on rates, terms and conditions that are just, reasonable and not unjustly or unreasonably discriminatory. It renders meaningless important competitive safeguards that the Commission unanimously adopted just a year ago. Moreover, it will make harder the road to comprehensive universal service and intercarrier compensation reform. For all these reasons, I dissent from this portion of the item.

STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-139; *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273;*Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21;*Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190

An integral part of the pro-competitive, de-regulatory national policy framework established by Congress in the 1996 Act is the section 10 forbearance provision. Today's increasingly competitive telecommunications marketplace, including cross platform competitors like wireless and cable, provide consumers with an array of choices that ensure the consumer protection once deemed necessary through government regulation. When the Commission finds that certain filings are no longer needed to fulfill their consumer protection goals, we should grant relief accordingly. That is the case today, as we grant partial forbearance from carriers' obligation to file certain Automated Reporting Management Information System (ARMIS) "service quality and infrastructure" reports and extend relief from cost assignment rules previously granted to AT&T to Verizon and Qwest.

The ARMIS reports, created in the Commission's *Price Cap Order* nearly two decades ago, were intended to serve as "safety nets" to ensure that incumbent local exchange carriers did not lower quality of customer service to increase short-term profit or fail to invest in infrastructure under the new regulatory framework. With the advent of competition in the telecommunications marketplace the opposite has happened, with industry offering a myriad of options to the consumer, investing approximately $68 billion in the marketplace just last year. The majority of these reports, adopted to monitor whatever "theoretical concern" there may have been, are no longer needed to fulfill their goals of consumer protection.

As a former state commissioner, I appreciate the participation of my state colleagues in this proceeding and have carefully considered their concerns. I highlight the fact that we do not preempt any state authority in this order. We clearly acknowledge and in essence bolster the consumer protection authority of the states to obtain any information from any of these carriers for their own regulatory purposes. States have always taken the lead in protecting the consumer interest and have overarching statutory authority that goes far beyond keeping data reports.

This forbearance is a reasoned approach which both grants and denies forbearance, based on specific circumstances. Thus, we find that there is still a federal need for the collection of switched access line data used by USAC to calculate growth in access lines as part of the formula for determining

interstate access support, and business line count information in the non-impairment thresholds for the Commission's unbundling rules.

As Federal Chairman of the Federal-State Joint Board on Advanced Services, I commend the Chairman for recognizing the importance of maintaining certain data that could be helpful in future policymaking considerations regarding public safety and broadband deployment.

As we all work together toward ensuring that every person in this country has broadband access, from the broadband mapping legislation proposed by Chairmen Inouye and Markey to the proceedings at the FCC, to local and state initiatives such as Connect Tennessee, it is important to ensure that we retain data that will help us achieve those goals. However, I find it inconsistent that in this order that we on one hand grant forbearance relief to a specific class of carriers and on the other hand we potentially open the door to further regulation on a broad, industry-wide basis. Undoubtedly, broadband and public safety are crucial public policy goals that may indeed require more information than is currently collected. But if we are going to impose reporting requirements on carriers involved in our public safety infrastructure and deployment of broadband we need make sure that they are treated fairly and equitably, with the data collection being as minimally burdensome and least duplicative as possible, focusing on the enunciated goals of today, not the legacy requirements of yesterday.

I agree that as competition increases in the marketplace, we should level the playing field whenever possible whether within or across platforms. However, the entire reasoning on which this order is based on -- lifting regulations that are "no longer necessary" -- is not consistent with the potential "expansion" to other providers and platforms. I hope that we will continue to pursue the data necessary for our policy goals where it makes sense, especially utilizing data which may already be provided either to other governmental entities and non-profits (such as Connected Nation), and to encourage industry-based reporting parameters in keeping with our deregulatory policies to encourage investment and deployment of services and more choice for consumers.

In this order we also grant identical cost allocation relief to Verizon and Qwest that we provided to AT&T earlier this year. Like AT&T, these companies are now largely regulated under price caps, and there is no current federal need for the specific cost assignment rules implemented under rate of return regulation. By granting this forbearance, we are leveling the regulatory playing field and ensuring continued competition among these carriers. As a condition of this forbearance, we require Verizon and Qwest to file a compliance plan, as was the case with AT&T, to ensure that the Commission has any accounting data it needs for policymaking purposes moving forward.

While I agree philosophically that we should treat like "classes of carriers" in the same manner, I would have chosen another legal vehicle. Additionally, rather than granting forbearance first and then approving a compliance plan, perhaps it would be more logically sound if the Commission had all the relevant information – including the compliance plan -- prior to making the decision to expand relief. However, in the interest of ensuring that we are enabling competition in the marketplace by reducing the legacy barriers that unfairly burden some carriers and not others, I agree with the outcome, and hope the forthcoming compliance plan will indeed continue to protect consumers in markets and situations where necessary. Ultimately, it is our responsibility to ensure regulatory parity so that "similarly situated" classes of carriers are treated equally under the law.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-139; *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Frontier and Citizens ILECs For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*, WC Docket No. 07-204; *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273;*Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21;*Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190

I support AT&T's request for relief from the requirement to file ARMIS service quality and infrastructure reports in this forbearance petition and the extension of such relief to similarly situated carriers that have also requested such relief. As set forth in the order, these reports, which are filed by only a small group of carriers, no longer advance the consumer protection goals for which they were originally adopted. With this order, we are able to maintain effective consumer safeguards while also cleaning out unnecessary regulatory underbrush. Accordingly, I find that granting relief meets the statutory obligations of Section 10 and, therefore, is in the public interest.

I also am pleased that this item extends to Verizon and Qwest the relief the Commission previously afforded to AT&T eliminating certain cost allocation data collection and reporting requirements. As I said at that time, it is important to grant comparable relief to similarly situated carriers, and to do so as soon as possible.

Even after this limited forbearance order, the Commission can still gather information necessary to build a sufficient record for a legitimate regulatory purpose. For example, we appropriately deny forbearance with respect to business line count information used in the non-impairment thresholds for the Commission's unbundling rules. Further, some of the data currently provided in the ARMIS reports – if collected from a broader set of providers – could inform our decision-making with respect to public safety, broadband deployment, and perhaps other key issues. I therefore look forward to reviewing the responses to the Notice of Proposed Rulemaking asking whether and how the Commission should collect data from a broader cross-section of the industry. The fact that the relief in this order is conditioned on carriers continuing to publicly file ARMIS report data for two years will, to the extent we conclude that the collection of such data by the Commission is necessary and proper, ensure continuity.