APPENDIX E

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. Today, the Commission adopts a Further Notice on possible steps for the implementation of universal service and intercarrier compensation comprehensive reform. We believe it is best to leave the following topics to a Further Notice to help ensure the development of a reasoned and complete record on the issues.

3. Specifically, the Commission seeks comment on the appropriate, applicable cost standard under section 252(d)(2) of the Act. We seek comment on whether comprehensive reform for intercarrier compensation should apply to providers operating in Alaska, Hawaii, or any U.S. Territory or possession. Additionally, we seek comment on how carriers' current rates should be transitioned to a new intercarrier compensation regime. Also, we seek comment on whether the Commission should set any conditions on the reciprocal compensation rates set by states. Should any transitional rates apply to VoIP traffic?

4. We also seek comment on the appropriate default rules regarding where a carriers' "network edge" should be following any transition. The Further Notice also seeks comment on whether the reciprocal compensation rates between carriers should be symmetrical without exception and regardless of whether traffic exchanged between the carriers is balanced or not. In addition, we seek comment on the appropriate guidelines regarding the application of section 251(f)(2) of the Act.

5. We seek comment on the appropriate treatment of existing agreements between parties. We also seek comment on various revenue recovery opportunities for carriers and possible supplemental universal service recovery support that would be available where necessary. Should the Commission also require carriers to file an annual report showing how any net access savings are allocated? We also seek comment on whether or not the Commission should enlist the aid of the Separations Joint Board on possible changes to end-user charges.

6. The Further Notice also seeks comment on measures to ensure the ability of carriers to receive the appropriate compensation for traffic terminated on their networks. We also seek comment on an interim solution to the "access stimulation" arbitrage problem. Additionally, we seek comment on whether originating access charges are inconsistent with comprehensive reform and the appropriate transition for the elimination of originating access. We also seek comment on whether or not any comprehensive reform warrants the adoption of rules or guidelines

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

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

governing the terms and conditions of transit service.

7. We also seek comment on how best to reform the distribution of high-cost universal service support. Specifically, we seek comment on ways to control the growth of the high-cost fund, including whether it is necessary to cap high-cost universal service support to fulfill our statutory obligation to create a specific, predictable, and sufficient universal service mechanism. We seek comment on how any such caps should be implemented. We seek comment on whether we should condition receipt of high-cost support on an eligible telecommunications carrier's (ETC) commitment to provide broadband Internet access service throughout its service area. We seek comment on the use of reverse auctions as a method for disbursing high-cost support, either to areas where an incumbent LEC does not commit to provide broadband Internet access service, or for the distribution of high-cost support to all ETCs. We seek comment on eliminating the identical support rule for competitive ETCs, and on whether competitive ETC support should be based on their own costs or disbursed via reverse auctions.

8. We seek comment on whether to adopt a pilot program to provide universal service support to low-income consumers for broadband Internet access service. Should low-income consumers receive support under the pilot program for discounts on broadband Internet access service and devices necessary to access such services? What implementation and reporting requirements associated with such a pilot program should the Commission adopt?

9. We also seek comment on reforming the universal service contribution assessment methodology. Specifically, we seek comment on whether to adopt a contribution mechanism of $1.00 per residential telephone number, and move to a connections and/or numbers-based contribution mechanism for business services; or whether to adopt a contribution mechanism of $0.85 per telephone number for all numbers, and a connections-based contribution mechanism for business services of $5.00 per connection up to 64 kbps and $35.00 per connection over 64 kbps. We seek comment on what numbers should be assessable under a numbers-based contribution mechanism. We also seek comment on how to treat wireless prepaid plans, on exceptions to the contribution obligations, on reporting and recordkeeping requirements, and on a transition to the new contribution methodology.

10. Finally, we seek comment on what revisions to our rules are needed to implement comprehensive reform. For example, what changes, if any, are needed to the rules contained in Parts 51, 54, 61, and 69?

B. Legal Basis

11. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1–4, 201–209, 214, 218–220, 224, 251, 252, 254, 303(r), 332, 403, 502, 503 of the Communications Act of 1934, as amended, and Sections 601 and 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151–154, 157 nt, 201–209, 214, 218–220, 224, 251, 252, 254, 303(r), 332, 403, 502, 503 and sections 1.1, 1.411–1.429 and 1.1200–1.1216 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.411–1.429 and 1.1200–1.1216.

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

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[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

[4] *See* 5 U.S.C. § 603(b)(3).

[5] *See* 5 U.S.C. § 601(6).

same meaning as 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.[7]

13. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[8] According to Census Bureau data for 2002, there were 2,432 firms in this category, total, that operated for the entire year.[9] Of this total, 2,395 firms had employment of 999 or fewer employees, and an additional 37 firms had employment of 1,000 employees or more.[10] Thus, under this size standard, the majority of firms can be considered small.

14. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to 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.[11] According to Commission data, 1,311 carriers reported that they were incumbent local exchange service providers.[12] Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.[13] Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Further Notice.

15. **Incumbent Local Exchange Carriers (incumbent LECs).** 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.[14] According to Commission data, 1,311 carriers reported that they were engaged in the provision of local exchange services.[15] Of these 1,307 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.[16] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Further Notice.

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[6] *See* 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] *See* 15 U.S.C. § 632.

[8] 13 C.F.R. § 121.201, U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," North American Industry Classification System (NAICS) code 517110.

[9] 13 C.F.R. § 121.201, NAICS code 517110.

[10] *See id.*

[11] 13 C.F.R. § 121.201, NAICS code 517110.

[12] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Aug. 2008) (*Trends in Telephone Service*).

[13] *See id.*

[14] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[15] *See Trends in Telephone Service* at Table 5.3.

[16] *See id.*

16. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard *(e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its* field of operation."[17] 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.[18] 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.

17. **Competitive Local Exchange Carriers (competitive LECs), 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.[19] According to Commission data, 1,005 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[20] Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees.[21] 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.[22] In addition, 89 carriers have reported that they are Other Local Service Providers.[23] Of the 89, all 89 have 1,500 or fewer employees and none has more than 1,500 employees.[24] 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 rules adopted pursuant to the Further Notice.

18. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[25] According to Commission data, 300 companies reported that their primary telecommunications service activity was the provision of interexchange services.[26] Of these 300 companies, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees.[27] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

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[17] 5 U.S.C. § 601(3).

[18] *See* 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); *see also* 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

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

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

[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[26] *See Trends in Telephone Service* at Table 5.3.

[27] *See id.*

19. **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.[28] According to Commission data, 28 carriers have reported that they are engaged in the provision of operator services.[29] Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees.[30] Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Further Notice.

20. **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.[31] According to Commission data, 526 carriers have reported that they are engaged in the provision of payphone services.[32] Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees.[33] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

21. **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.[34] According to Commission data, 88 carriers have reported that they are engaged in the provision of prepaid calling cards.[35] Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees.[36] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

22. **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.[37] According to Commission data, 151 carriers have reported that they are engaged in the provision of local resale services.[38] Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees.[39] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Further Notice.

23. **Toll Resellers.** The SBA has developed a small business size standard for the category of

[28] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[29] *See Trends in Telephone Service* at Table 5.3.

[30] *See id.*

[31] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[32] *See Trends in Telephone Service* at Table 5.3.

[33] *See id.*

[34] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[35] *See Trends in Telephone Service* at Table 5.3.

[36] *See id.*

[37] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[38] *See Trends in Telephone Service* at Table 5.3.

[39] *See id.*

Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[40] According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services.[41] Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees.[42] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Further Notice.

24. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. 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.[43] According to Commission data, 91 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[44] Of these 91 companies, an estimated 88 have 1,500 or fewer employees and three have more than 1,500 employees.[45] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Further Notice.

25. **800 and 800-Like Service Subscribers.**[46] 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.[47] 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.[48] According to our data, at the beginning of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116.[49] 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 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers; and 7,029,166 or fewer small entity 866 subscribers.

1. Wireless Carriers and Service Providers

26. 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

[40] *See* 13 C.F.R. § 121.201, NAICS code 517911.

[41] *See Trends in Telephone Service* at Table 5.3.

[42] *See id.*

[43] *See* 13 C.F.R. § 121.201, NAICS code 517110.

[44] *See Trends in Telephone Service* at Table 5.3.

[45] *See id.*

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

[47] *See* 13 C.F.R. § 121.201, NAICS code 517911.

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

[49] *See id.*

implicated.

27. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.[50] Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of Paging and Cellular and Other Wireless Telecommunications.[51] 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.[52] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[53] 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.[54] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[55] 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, 434 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.[56] We have estimated that 222 of these are small, under the SBA small business size standard.[57] Thus, under this category and size standard, approximately half of firms can be considered small.

28. **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.[58] 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.[59] These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[60] No small businesses, within the SBA-approved small business size

[50] *See* 13 C.F.R. § 121.201, NAICS code 517210. 2007 Census data are not yet available.

[51] *See* 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

[52] *See* 13 C.F.R. § 121.201, NAICS code 517211.

[53] *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 "1,000 employees or more."

[54] *See* 13 C.F.R. § 121. 201, NAICS code 517212.

[55] *See 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 "1,000 employees or more."

[56] *See Trends in Telephone Service* at Table 5.3.

[57] *See id.*

[58] *See generally 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, 11 FCC Rcd 7824 (1996); *see also* 47 C.F.R. § 24.720(b)(1).

[59] *See generally 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, 11 FCC Rcd 7824 (1996); *see also* 47 C.F.R. § 24.720(b)(2).

[60] *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).

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.[61] 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 that 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.

29. **Narrowband Personal Communications Services.** To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[62] 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.[63] 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.[64] 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.

30. **Paging (Private and Common Carrier).** The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees.[65] 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.[66] A "small business" is an entity that, together with its

[61] *See* FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997). *See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

[62] *See generally 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).

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

[64] *See* 47 C.F.R. § 24.321(a).

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

[66] *See 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

(continued....)

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.[67] The SBA has approved these small business size standards.[68] According to Commission data, 281 carriers have reported that they are engaged in Paging or Messaging Service.[69] Of these, an estimated 279 have 1,500 or fewer employees, and two have more than 1,500 employees.[70] Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

31. **Wireless Telephony.** Wireless telephony includes cellular, PCS, and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for Cellular and Other Wireless Telecommunications services.[71] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[72] According to Commission data, 434 carriers reported that they were engaged in the provision of wireless telephony.[73] We have estimated that 222 of these are small under the SBA small business size standard.[74]

32. **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.[75] The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Further Notice.

33. **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

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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*).

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

[68] *See 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, 10085–88, paras. 98–107 (1999) (*Paging Third Report and Order*).

[69] *See Trends in Telephone Service* at Table 5.3.

[70] *See id.*

[71] *See* 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 517201.).

[72] *See id.*

[73] *See Trends in Telephone Service* at Table 5.3.

[74] *See id.*

[75] *See* 13 C.F.R. § 121.201, NAICS code 517212.

credits and installment payments.[76] 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.[77] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[78] The SBA has approved these small business size standards.[79] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[80] 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.[81]

34. **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.[82] 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.

35. **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.[83] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[84] 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 $15 million for the preceding three years.[85] An auction of 52 Major Economic Area

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

[77] *See id.* at 11068–69, para. 291.

[78] *See id.* at 11068–70, paras. 291–95.

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

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

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

[82] *See* 47 C.F.R. § 90.814(b).

[83] *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) (*700 MHz Guard Band Order*).

[84] *See id.* at 5343–45 paras. 106–10.

[85] *See id.*

(MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[86] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[87]

36. **Rural Radiotelephone Service**. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[88] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[89] 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.[90] 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.

37. **Air-Ground Radiotelephone Service**. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[91] 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.[92] 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 and may be affected by rules adopted pursuant to the Further Notice.

38. **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.[93] 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

[86] *See 700 MHz Guard Band Auction Closes*, Public Notice, 15 FCC Rcd 18026 (2000).

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

[88] *See* 47 C.F.R. § 22.99.

[89] *See* 47 C.F.R. §§ 22.757, 22.759.

[90] *See* 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.).

[91] *See* 47 C.F.R. § 22.99.

[92] *See* 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.).

[93] *See* 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.).

exceed $15 million dollars.[94] In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[95] 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 and may be affected by rules adopted pursuant to the Further Notice.

39. **Fixed Microwave Services**. Fixed microwave services include common carrier,[96] private operational-fixed,[97] and broadcast auxiliary radio services.[98] 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.[99] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

40. **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.[100] There are approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for Cellular and Other Wireless Telecommunications services.[101] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[102]

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[94] *See generally 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, 19884–88 paras. 64–73 (1998).

[95] *See id.*

[96] *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).

[97] 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.

[98] 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.

[99] *See* 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.).

[100] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 C.F.R. §§ 22.1001–1037.

[101] *See* 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] *See id.*

41. **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.[103] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licenses affected by this analysis includes these eight entities.

42. **39 GHz Service.** The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years.[104] 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.[105] The SBA has approved these small business size standards.[106] 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 rules adopted pursuant to the Further Notice.

43. **Wireless Cable Systems.** Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (BRS), formerly Multipoint Distribution Service (MDS),[107] and the Educational Broadband Service (EBS), formerly Instructional Television Fixed Service (ITFS),[108] to transmit video programming and provide broadband services to residential subscribers.[109] 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.[110] 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

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[103] *See* 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.).

[104] *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, 18661–64, paras. 149–151 (1997).

[105] *See id.*

[106] *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).

[107] MDS, also known as Multichannel Multipoint Distribution Service (MMDS) has been renamed the Broadband Radio Service (BRS) and is regulated by Part 27 of the Commission's rules; *see* 47 C.F.R. Part 27, subpart M. *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*, WT Docket Nos. 03-66, 03-67, 02-68, 00-230, MM Docket No. 97-217, RM-10586, RM-9718, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (*MDS/ITFS Order*).

[108] ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); *see generally, MDS/ITFS Order*, 19 FCC Rcd 14165 (2004). EBS systems are regulated by Part 76 of the Commission's rules; *see* 47 C.F.R. Part 76.

[109] *See generally Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Notice of Inquiry, 21 FCC Rcd 12229, 12253, para. 71 (2006) (in which the Commission seeks industry comment on new uses of traditional cable systems).

[110] *See id.*

broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[111] 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.[112]

44. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,[113] 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. This definition of a small entity in the context of MDS auctions has been approved by the SBA.[114] In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed small business status. 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.[115] 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.[116] 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 that may be affected by rules adopted pursuant to the Further Notice.

45. 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).[117] 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 that may be affected by rules adopted pursuant to the Further Notice.

46. In the 1998 and 1999 LMDS auctions,[118] 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

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[111] *See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHZ Frequency Band, to Reallocate the 29.5-30.0 GHZ Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997) (*LMDS Order*).

[112] *See* 13 C.F.R. § 121.201, NAICS code 517510.

[113] MDS Auction No. 6 began on Nov. 13, 1995, and closed on Mar. 28, 1996 (67 bidders won 493 licenses).

[114] *See generally Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, MM Docket No. 94-131, Report and Order, 10 FCC Rcd 9589 (1995).

[115] Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934. *See* 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.

[116] *See* 13 C.F.R. § 121.201, NAICS code 517510.

[117] 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). *See* 5 U.S.C. §§ 601(4)–(6). We do not collect annual revenue data on ITFS (now EBS) licensees.

[118] The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on Feb. 18, 1998, and closed on Mar. 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on Apr. 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

years.[119] 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.[120] These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.[121] 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.

47. **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.[122] 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.[123] 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.[124] These size standards will be used in future auctions of 218-219 MHz spectrum.

48. **24 GHz – Incumbent Licensees**. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.[125] We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[126] 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.

49. **24 GHz – Future Licensees**. With respect to new applicants in the 24 GHz band, the size standard for "small business" is an entity that, together with controlling interests and affiliates, has

[119] *See generally LMDS Order*, 12 FCC Rcd 12545 (1997).

[120] *See id.*

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

[122] *See generally 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).

[123] *See generally 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).

[124] *See id.*

[125] *See* 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.).

[126] 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.

average annual gross revenues for the three preceding years not in excess of $15 million.[127] "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.[128] The SBA has approved these small business size standards.[129] These size standards will apply to a future 24 GHz license auction, if held.

2. Satellite Service Providers

50. **Satellite Telecommunications.** Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million.[130] The most current Census Bureau data, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both prior categories, such a business was considered small if it had, as now, $15 million or less in average annual receipts.[131]

51. 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."[132] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[133] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[134] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Further Notice.

52. 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."[135] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[136] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had

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[127] *See 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).

[128] *See 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).

[129] *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).

[130] *See* 13 C.F.R. § 121.201, NAICS code 517410.

[131] *See* 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

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

[133] *See* 13 C.F.R. § 121.201, NAICS code 517410.

[134] *See id.* An additional 38 firms had annual receipts of $25 million or more.

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

[136] *See* 13 C.F.R. § 121.201, NAICS code 517910.

annual receipts of $10 million to $24,999,999.[137] 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

53. In 2007, the SBA recognized new census categories for small cable entities.[138] *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.

54. **Cable and Other Program Distribution.** The Census Bureau defines this category as "third-party distribution systems for broadcast programming. . . . [that] 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. . . [and] do not generally originate programming material."[139] The SBA has developed a small business size standard for Cable and Other Program Distribution, of firms having $13.5 million or less in annual receipts.[140] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[141] 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.[142] Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Further Notice.

55. **Cable Companies and Systems.** The Commission has 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.[143] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[144] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[145] 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.[146] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Further Notice.

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[137] *See id.* An additional 14 firms had annual receipts of $25 million or more.

[138] *See* 13 C.F.R. § 121.201.

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

[140] *See* 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.).

[141] *See id.*

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

[143] *See* 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. *See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 at para. 28 (1995).

[144] 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.

[145] *See* 47 C.F.R. § 76.901(c).

[146] 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.

56. **Cable System Operators.** The Act 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."[147] 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.[148] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[149] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[150] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

57. **Open Video Services.** Open Video Service (OVS) systems provide subscription services.[151] As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.[152] 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.[153] 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 rules adopted pursuant to the Further Notice.

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

58. In 2007, the SBA recognized two new small business, economic census categories: (1) Internet Publishing and Broadcasting and Web Search Portals[154] and; (2) All Other Information Services.[155] 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.

59. **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

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[147] 47 U.S.C. § 543(m)(2); *see also* 47 C.F.R. § 76.901(f) & nn.1–3.

[148] 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).

[149] 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.

[150] 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.

[151] *See* 47 U.S.C. § 573.

[152] *See* 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.).

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

[154] *See* 13 C.F.R. § 121.201, NAICS code 519130 (establishing a $500,000 revenue ceiling).

[155] *See* 13 C.F.R. § 121.201, NAICS code 519190 (establishing a $6.5 million revenue ceiling).

related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity."[156] *Under the SBA size standard, such a business is small if it has average annual* receipts of $23 million or less.[157] According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.[158] 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 rules adopted pursuant to the Further Notice.

60. **Web Search Portals.** Our action may pertain 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."[159] The SBA has developed a small business size standard for this category of $6.5 million or less in average annual receipts.[160] According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.[161] 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 rules adopted pursuant to the Further Notice.

61. **Data Processing, Hosting, and Related Services.** Entities in this category "primarily ... provid[e] infrastructure for hosting or data processing services."[162] The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts.[163] According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.[164] 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 rules adopted pursuant to the Further Notice.

62. **All Other Information Services.** The Census Bureau defines this industry as including "establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)."[165] 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,

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

[157] *See* 13 C.F.R. § 121.201, NAICS code 518111.

[158] *See* 13 C.F.R. § 121.201, NAICS code 518111.

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

[160] *See* 13 C.F.R. § 121.201, NAICS code 518112.

[161] *See* 13 C.F.R. § 121.201, NAICS code 518112.

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

[163] *See* 13 C.F.R. § 121.201, NAICS code 518210.

[164] *See* 13 C.F.R. § 121.201, NAICS code 518210.

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

instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts.[166] According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.[167] 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.

63. **Internet Publishing and Broadcasting.** The Census Bureau defines this industry as "establishments engaged in publishing and/or broadcasting content on the Internet exclusively. . . . [that . . .] do not provide traditional (non-Internet) versions of the content that they publish or broadcast."[168] The SBA has developed a small business size standard for this Census category; that size standard is 500 or fewer employees.[169] According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.[170] Of these, 1,351 had employment of 499 or fewer employees, and 11 firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

64. In the Further Notice, the Commission seeks comment on issues that must be addressed to comprehensively reform intercarrier compensation. These issues include the Commission's jurisdiction to adopt such reform, how relevant statutory provisions should be interpreted and applied, and if and how carriers should be allowed to recover revenues that might be reduced by any intercarrier compensation reforms. In addition, the Commission seeks comment on the transition to the elimination of originating access. Compliance with a transition away from originating access charges will apply to all carriers but may prove financially burdensome to some small entities and may include new or reduced administrative processes.

65. The Commission currently does not regulate the provision of transit service between carriers and many carriers have entered into agreements governing the provision of transit traffic. Rules imposing transit service obligations will likely have no significant impact on carriers already providing, or carriers already using, transit service. For carriers that would be affected, the burdens may include determining the price of transit service purchased and/or provided, and developing additional administrative capabilities to account for providing and/or receiving transit service.

66. In this Further Notice the Commission also seeks comment on whether carriers will be able to receive universal service support to recover net reduced revenues from intercarrier compensation as a result of reforms that could be adopted. To allow rate-of-return carriers to receive universal service support in this manner, we may need to modify existing rules. For carriers that may be affected, burdens may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive such universal service support. Additionally, these carriers may need to modify some administrative processes in order to comply with any new or revised rules the Commission adopts as a result of the Further Notice.

67. Possible modifications to the rules in Part 51, if adopted, will affect all carriers. Possible

[166] *See* 13 C.F.R. § 121.201, NAICS code 519190.

[167] *See* 13 C.F.R. § 121.201, NAICS code 519190.

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

[169] *See* 13 C.F.R. § 121.201, NAICS code 516110.

[170] *See* 13 C.F.R. § 121.201, NAICS code 516110.

modifications to the rules in Part 61 of the Commission's rules, if adopted, will affect all carriers that file and/or modify tariff filings. For example, modified rules may decrease or increase a carriers' tariff filing requirements. Modifications to the rules in Part 69 of the Commission's rules, if adopted, will affect all carriers that receive and/or pay access charges. Such revisions could require modifications to carrier billing systems and associated reporting and recordkeeping systems. Additionally, modification of the Commission's Part 69 rules may require carriers to modify and/or establish intercarrier compensation agreements.

68. As part of the Further Notice, the Commission seeks comment on reforming the high-cost disbursement mechanism, including the use of reverse auctions, and how best to implement changes to the universal service contribution mechanism. Compliance with a new universal service contribution mechanism will apply to all carriers, which may prove financially burdensome to small entities as they make changes from reporting information based on the revenue-based mechanism. Changes to the high-cost mechanism, and adoption of a broadband pilot program for low-income consumers may also necessitate additional reporting and recordkeeping requirements. Additionally, these proposed changes necessary to implement comprehensive reform also may require changes to Part 54 of the Commission's rules and will affect carriers subject to those rules.

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

69. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such 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 such small entities."[171]

70. The Further Notice seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Further Notice.

71. Throughout these proceedings the Commission has received proposals to treat small entities differently. We believe that consideration of commenters' transition proposals for implementing intercarrier compensation reform, as well as alternatives for a carriers' recovery of intercarrier revenues reduced as a result of any reforms that might be adopted could be consistent with our goals of a unified and simplified intercarrier compensation regime that will reduce arbitrage opportunities and promote innovation and competition and our statutory requirement to secure the viability of universal service.

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

72. None.

[171] 5 U.S.C. § 603(c)(1)–(c)(4).

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36

Today we tell the U.S. Court of Appeals for the D.C. Circuit and the Federal-State Joint Board on Universal Service that, after years of deliberation, we are still unready to move forward with comprehensive reform of intercarrier compensation and universal service. Instead, we issue another open-ended Further Notice of Proposed Rulemaking on a variety of approaches for comprehensive reform, and my colleagues promise to act on it by December 18.

I am disappointed by the Commission's unwillingness to step up and make tough choices to modernize our intercarrier compensation and universal service programs. I am also doubtful that the Commission will find itself any better equipped to act in another six weeks. However, I vote to approve this item because this is the only path my colleagues could agree on, and failure to respond to the Court in particular would result in an even sorrier state of affairs – immediate vacatur of our rules.

First, I am skeptical of today's response to the Court, which directed us to justify the Commission's interim intercarrier compensation rules for ISP-bound traffic. The Order treats ISP-bound traffic differently than all other traffic, including other IP traffic. The Order retains the interim rate cap of $0.0007 for terminating this traffic indefinitely. I doubt that an Order that retains artificial and unsupported distinctions between types of IP traffic and maintains an interim rate without establishing an end game will be seen any more favorably by the Court than the Commission's two previous attempts.

By singling out ISP-bound traffic for different treatment, we perpetuate the current patchwork of rates for different traffic. The Order argues that disparate treatment of ISP-bound traffic is justified to combat arbitrage. Yet arbitrage exists precisely because traffic is terminated at a variety of rates.

In addition, the $0.0007 rate cap for ISP-bound traffic was intended to be an interim measure pending comprehensive reform of intercarrier compensation. Indeed, the record does not support a differential rate for ISP-bound traffic except on an interim basis. And even then, $0.0007 can only be justified as an interim rate under a cost standard that we fail to adopt. A rate of $0.0007 is inconsistent with the current TELRIC standard, and the Order does not adequately explain why we retain this rate in the absence of moving forward with adopting a cost standard consistent with $0.0007. However, the Order simply states that the $0.0007 cap shall remain in place until we adopt more comprehensive intercarrier compensation reform. That is, we are establishing a perpetual interim rate. Although the Order is silent as to whether the $0.0007 rate is "interim," let's be clear – this is an interim rate to nowhere. I therefore believe that we have failed to respond to the Court.

In 2005, the Court denied an earlier mandamus petition based on the Commission's representation that it was committed to comprehensive reform. The Commission pointed to its Further Notice on comprehensive reform, including permanent rules to succeed the interim intercarrier compensation regime for ISP-bound traffic.

Three years later, the Commission once again finds itself asking the Court not to vacate our rules because the Commission remains committed to comprehensive reform. And once again, the Commission points to a Further Notice on comprehensive reform as evidence of its commitment.

I question whether my colleagues will be any more willing to adopt comprehensive reform in December. As explained below, I believe when December comes, the other Commissioners will simply pursue another Further Notice and another round of comment on the most difficult issues. If the Court wants a response – and is willing to give the Commission the benefit of the doubt rather than vacate our rules immediately – it should enforce our promise of reform on pain of automatic vacatur on December 19.

It is unfortunate that the Commission could not agree to adopt the comprehensive solution. I had proposed a comprehensive approach that would have transitioned all traffic to a final uniform rate, regardless of the type of traffic or jurisdiction. This approach would have answered the Court's direction – and I think it would have done so in a legally sustainable way.

Specifically, I would have concluded that all traffic falls within section 251(b)(5) and called upon each state to set a glide path to a reciprocal compensation rate applicable to all traffic under section 252(d)(2). Under this proposal, traffic terminated at rates below the glide path, such as ISP-bound traffic, would continue to be terminated at those rates, on an interim basis, until such traffic is swept into the glide path. Ultimately, the glide path would end at a lower, final uniform rate for all traffic.

Second, I view our failure to implement the Joint Board's recommendations as a tremendous missed opportunity. In particular, I supported the Joint Board's determination that broadband should be included in the universal service program. As I have said before, to fully appreciate and take advantage of the Internet today, consumers need broadband connections. Without this underlying infrastructure, efforts to implement advances in how we communicate, work, and provide education cannot succeed.

My proposal for implementing this recommendation would have spurred rapid and widespread deployment of broadband. I would have asked each carrier receiving high-cost universal service support to commit to provide broadband to all consumers in its study area within 5 years as a condition of continuing to receive support. If a carrier did not make that commitment, we would conduct a reverse auction to find out if any other carrier could do so. If nobody came forward, then we would have identified an unserved area, and could then determine what additional steps might be necessary to bring broadband to those consumers. In addition, I would have created a broadband Lifeline and Link Up program to ensure that low income consumers are not left out of our broadband future.

Finally, I am disappointed with the Further Notice issued today. After a decade of comment on these issues, we begin again from square one. To be clear, this is not a targeted Further Notice on a specific reform proposal. We are putting out for comment several proposals that would lead to radically different outcomes. In the Further Notice and in my colleagues' statement, my colleagues invite comment on conflicting questions, which reveal that they have no fundamental proposal for reform.

- Do we include broadband within the universal service program – or not?
- Do we provide support to competitive carriers based on their own costs? A reverse auction? Or do we phase out their support altogether?
- Should terminating rates be uniform by state – or uniform by carrier?
- Should we use an incremental cost standard for setting termination rates – or the existing TELRIC standard?

These questions have been debated exhaustively in the record for years. I fail to see how further comment over the next six weeks will help us resolve these issues.

Indeed, the longer we wait, the more difficult these issues become. Regulatory arbitrage will increase as long as rates differ by type of traffic and jurisdiction. Moreover, carriers are booking IP

traffic at vastly different rates that must be reconciled eventually. This type of traffic will continue to grow as carriers invest in broadband networks.

I would like to be encouraged by my colleagues' commitment that they will truly be ready to complete this much needed reform on December 18. The nature of the questions they included in the Further Notice makes me doubt they will have found their answers within an additional six weeks. I believe the far more likely outcome is that, in December, the other Commissioners will merely want another Further Notice and another round of comment on the most difficult questions. I do not believe they will be prepared to address the most challenging issues and that the Commission will be negotiating over what further questions to ask in December.

I recognize that few other issues before the Commission are as technically complex and involved, with as many competing interests, as are reforming the intercarrier compensation and universal service programs. But neither of those two realities are excuse for inaction.

JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS, JONATHAN S. ADELSTEIN, DEBORAH TAYLOR TATE AND ROBERT M. MCDOWELL

Re: *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36

Today's decision responds directly to the mandamus from the D.C. Circuit Court of Appeals regarding Core Communications, Inc. The item sets forth the Commission's legal justification for the rules it adopted in 2001 governing intercarrier compensation for telecommunications traffic bound for Internet service providers. It also preserves the ability to move towards a more unified intercarrier compensation regime.

We also issue a Further Notice seeking comment on specific proposals to reform the intercarrier compensation and universal service systems. While we do not pre-judge any of the proposals set forth therein, we do believe that there is a tentative but growing measure of consensus on a number of issues, including: moving intrastate access rates to interstate access levels over a reasonable period of time; not unduly burdening consumers with increases in their rates untethered to reductions in access charges; addressing phantom traffic and traffic stimulation; implementing an alternative cost recovery mechanism in certain circumstances; eliminating the identical support rule and moving over time towards support based on a company's own costs; emphasizing the importance of broadband to the future of universal service; and clarifying the implementation of the Alaska Native regions and tribal lands exception to the CETC cap adopted on May 1, 2008, and the need for special consideration for such areas. We would appreciate stakeholders attention to these issues of concern and consideration of whether modifications along these lines to the attached proposals are warranted. This Further Notice reflects our commitment to comprehensive reform of the intercarrier compensation and universal service systems in an expedited fashion.

Finally, the Commission today has completed a proceeding to consider the recommendations of the Federal-State Joint Board on Universal Service. We appreciate all of the valuable input that the Board has provided the Commission. We however choose not to implement the Joint Board's recommendations at this time. We thank the Board members for their tireless efforts and look forward to obtaining their valuable input on an on-going basis.

For the foregoing reasons, we are pleased to approve today's Report & Order and Further Notice of Proposed Rulemaking