

and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁴² Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.¹⁴³

D. Comment Filing Procedures

66. Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁴⁴ interested parties may file comments and reply comments regarding the NOI and NPRM on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's e-Rulemaking Portal; or (3) by filing paper copies.¹⁴⁵

67. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs/> or the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

68. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

69. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

70. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington DC 20554.

71. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

72. Parties should send a copy of their filings to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A452, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to charles.tyler@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

73. Documents in this proceeding will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

¹⁴² 47 C.F.R. § 1.1206(b)(2).

¹⁴³ 47 C.F.R. § 1.1206(b).

¹⁴⁴ 47 C.F.R. §§ 1.415, 1.419.

¹⁴⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

V. ORDERING CLAUSES

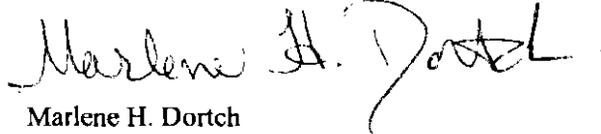
74. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 214, 254, and 403 this notice of inquiry IS ADOPTED.

75. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 214, 254, and 403, and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411, this notice of proposed rulemaking IS ADOPTED.

76. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

77. IT IS FURTHER ORDERED, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 C.F.R. §§ 1.4(b)(1), 1.103(a), that this notice of notice of proposed rulemaking SHALL BE EFFECTIVE on the date of publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),¹ the Commission prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

I. Need for, and Objectives of, the Notice:

2. On March 16, 2010, the Commission released a Joint Statement on Broadband stating that “[t]he nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”⁴ On the same day, the Commission delivered to Congress a National Broadband Plan recommending that the Commission adopt cost-cutting measures for existing voice support and create a Connect America Fund (CAF), without increasing the overall size of the Fund, to support the provision of broadband communications in areas that would be unserved without such support or that depend on universal service support for the maintenance of existing broadband service.⁵

3. The National Broadband Plan recommends that the Commission take steps to manage the universal service fund so that its total size remains close to its current level (in 2010 dollars) to minimize the burden of increasing universal service contributions on consumers.⁶ The NPRM seeks comment on specific common-sense reforms to contain growth in the legacy high-cost support mechanisms and identify savings that can be shifted toward broadband. Specifically, the NPRM seeks comment on capping legacy high-cost support provided to incumbent telephone companies at 2010 levels;⁷ shifting rate-of-return carriers to incentive regulation and converting interstate common line support to a frozen amount per line;⁸ eliminating interstate access support;⁹ and eliminating high-cost support for competitive eligible telecommunications carriers.¹⁰

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, FCC 10-42 (rel. Mar. 16, 2010) at 2.

⁵ Federal Communications Commission, *Connecting America: The National Broadband Plan*, (rel. Mar. 16, 2010) (National Broadband Plan) at 144.

⁶ *See id.* at 149.

⁷ *See NPRM*, paras. 51-52.

⁸ *See id.*, paras. 55-56.

⁹ *See id.*, paras. 57-58.

¹⁰ *See id.*, paras. 60-61.

II. Legal Basis:

4. This legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 214, 254, and 403, and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411.

III. Description and Estimate of the Number of Small Entities to which the Rules Will Apply:

5. 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 and policies, if adopted.¹¹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹³ 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 SBA.¹⁴

6. **Small Businesses.** Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.¹⁵

7. **Small Organizations.** Nationwide, as of 2002, there are approximately 1.6 million small organizations.¹⁶ A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁷

8. **Small Governmental Jurisdictions.** The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁸ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁹ We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."²⁰ Thus, we estimate that most governmental jurisdictions are small.

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

¹¹ 5 U.S.C. § 603(b)(3).

¹² 5 U.S.C. § 601(6).

¹³ 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."

¹⁴ 15 U.S.C. § 632.

¹⁵ See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs> (accessed Apr. 2010).

¹⁶ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁷ 5 U.S.C. § 601(4).

¹⁸ 5 U.S.C. § 601(5).

¹⁹ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, p. 272, Table 415.

²⁰ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”²¹ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.²² We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. **Incumbent Local Exchange Carriers (“ILECs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. 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.²³ According to Commission data,²⁴ 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

11. **Competitive Local Exchange Carriers (“CLECs”), Competitive Access Providers (“CAPs”), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ According to Commission data,²⁶ 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are “Other Local Service Providers.” Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities that may be affected by our proposed action.

12. **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.²⁷ According to Commission data,²⁸ 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and

²¹ 15 U.S.C. § 632.

²² 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) (“Small Business Act”); 5 U.S.C. § 601(3) (“RFA”). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

²³ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

²⁴ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, Page 5-5 (Aug. 2008) (“Trends in Telephone Service”). This source uses data that are current as of November 1, 2006.

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

²⁶ “Trends in Telephone Service” at Table 5.3.

²⁷ 13 C.F.R. § 121.201, NAICS code 517310.

²⁸ “Trends in Telephone Service” at Table 5.3.

two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

13. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ According to Commission data,³⁰ 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

14. **Interexchange Carriers (“IXCs”).** Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. 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,³² 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

15. **Satellite Telecommunications and All Other Telecommunications.** These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.³³ The second has a size standard of \$25 million or less in annual receipts.³⁴ The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.³⁵

16. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing 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.”³⁶ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.³⁷ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.³⁸ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

17. The second category of All Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes

²⁹ 13 C.F.R. § 121.201, NAICS code 517310.

³⁰ “Trends in Telephone Service” at Table 5.3.

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

³² “Trends in Telephone Service” at Table 5.3.

³³ 13 C.F.R. § 121.201, NAICS code 517410.

³⁴ 13 C.F.R. § 121.201, NAICS code 517919.

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

³⁶ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

³⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

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

establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.”³⁹ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁴⁰ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁴¹ Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

18. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.⁴² Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”⁴³ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁴⁴ 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 category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁴⁵ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁴⁶ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁴⁷ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁴⁸ Thus, we estimate that the majority of wireless firms are small.

19. **2.3 GHz Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁴⁹ The SBA has

³⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

⁴⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

⁴¹ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁴² U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁴³ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴⁴ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁴⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁴⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

⁴⁸ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁹ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order*, 12 FCC Rcd 10785, 10879, para. 194 (1997).

approved these definitions.⁵⁰ The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

20. **1670-1675 MHz Services.** An auction for one license in the 1670-1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

21. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁵¹ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁵² According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.⁵³ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.⁵⁴ We have estimated that 222 of these are small under the SBA small business size standard.

22. **Broadband Personal Communications Service.** The broadband personal communications services (“PCS”) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁵⁵ For Block F, an additional small business size standard 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.⁵⁶ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁵⁷ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 “small” and “very small” business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁵⁸ In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.⁵⁹

23. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses.⁶⁰ 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. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24

⁵⁰ See *Alvarez Letter 1998*.

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

⁵² *Id.*

⁵³ “Trends in Telephone Service” at Table 5.3.

⁵⁴ “Trends in Telephone Service” at Table 5.3.

⁵⁵ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850-7852, paras. 57-60 (1996) (“*PCS Report and Order*”); see also 47 C.F.R. § 24.720(b).

⁵⁶ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

⁵⁷ See *Alvarez Letter 1998*.

⁵⁸ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

⁵⁹ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

⁶⁰ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

winning bidders for 217 licenses.⁶¹ Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.⁶² Of the 14 winning bidders, six were designated entities.⁶³ In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.⁶⁴

24. **Advanced Wireless Services.** In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.⁶⁵ This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.⁶⁶ Four winning bidders that identified themselves as very small businesses won 17 licenses.⁶⁷ Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

25. **700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.⁶⁸ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁶⁹ A “very small business” is defined as 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.⁷⁰ Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses. The third category is “entrepreneur,” which is defined as 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.⁷¹ The SBA

⁶¹ See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

⁶² See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

⁶³ *Id.*

⁶⁴ See Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 3008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice*, 23 FCC Rcd 7496 (2008) (“AWS-1 and Broadband PCS Procedures Public Notice”).

⁶⁵ See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

⁶⁶ *Id.* at 23 FCC Rcd at 7521-22.

⁶⁷ See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period”, *Public Notice*, 23 FCC Rcd 12749-65 (2008).

⁶⁸ See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002) (“*Channels 52-59 Report and Order*”).

⁶⁹ See *Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88, ¶ 172.

⁷⁰ See *id.*

⁷¹ See *id.*, 17 FCC Rcd at 1088, ¶ 173.

approved these small size standards.⁷² The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.⁷³ The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.⁷⁴ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.⁷⁵ In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

26. In 2007, the Commission adopted the *700 MHz Second Report and Order*.⁷⁶ The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73.⁷⁷ A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.⁷⁸ The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.⁷⁹

⁷² See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) ("*Alvarez Letter 1999*").

⁷³ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

⁷⁴ See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

⁷⁵ See *id.*

⁷⁶ Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, *Second Report and Order*, FCC 07-132 (2007) ("*700 MHz Second Report and Order*"), 22 FCC Rcd 15289 (2007).

⁷⁷ Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice*, 23 FCC Rcd 4572 (2008).

⁷⁸ *Id.* 23 FCC Rcd at 4572-73.

⁷⁹ *Id.*

27. **700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁸⁰ A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.⁸¹ 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.⁸² SBA approval of these definitions is not required.⁸³ In 2000, the Commission conducted an auction of 52 Major Economic Area (“MEA”) licenses.⁸⁴ 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 and closed in 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.⁸⁵

28. **Specialized Mobile Radio.** The Commission awards “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.⁸⁶ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.⁸⁷ The SBA has approved these small business size standards for the 900 MHz Service.⁸⁸ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.⁸⁹ A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.⁹⁰

29. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15

⁸⁰ See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000) (“746-764 MHz Band Second Report and Order”).

⁸¹ See *746-764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343, para. 108.

⁸² See *id.*

⁸³ See *id.*, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746-764 MHz and 776-794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

⁸⁴ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

⁸⁵ See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

⁸⁶ 47 C.F.R. § 90.814(b)(1).

⁸⁷ 47 C.F.R. § 90.814(b)(1).

⁸⁸ See *Alvarez Letter 1999*.

⁸⁹ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

⁹⁰ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

million size standard.⁹¹ In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.⁹² Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

30. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR 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. In addition, we do not know how many of these firms have 1500 or fewer employees.⁹³ We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

31. **Cellular Radiotelephone Service.** Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.⁹⁴ Bidding credits for designated entities were not available in Auction 77.⁹⁵ In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.⁹⁶

32. **Private Land Mobile Radio (“PLMR”).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.⁹⁷ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.⁹⁸

33. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible

⁹¹ See “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17162 (2000).

⁹² See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (2000).

⁹³ See generally 13 C.F.R. § 121.201, NAICS code 517210.

⁹⁴ See Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *Public Notice*, 23 FCC Rcd 6670 (2008).

⁹⁵ *Id.* at 6685.

⁹⁶ See Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *Public Notice*, 23 FCC Rcd 9501 (2008).

⁹⁷ See 13 C.F.R. § 121.201, NAICS code 517210.

⁹⁸ See generally 13 C.F.R. § 121.201.

to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

34. **Fixed Microwave Services.** Fixed microwave services include common carrier,⁹⁹ private operational-fixed,¹⁰⁰ and broadcast auxiliary radio services.¹⁰¹ 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 Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁰² The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer 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 proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

35. **39 GHz Service.** The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.¹⁰³ 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.¹⁰⁴ The SBA has approved these small business size standards.¹⁰⁵ The auction of the 2,173, 39 GHz licenses, began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

36. **Local Multipoint Distribution Service.** Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹⁰⁶ The auction of the 986 LMDS licenses began and closed in 1998. The

⁹⁹ See 47 C.F.R. §§ 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

¹⁰⁰ 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.

¹⁰¹ 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.

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

¹⁰³ See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order, 12 FCC Rcd 18600 (1997).

¹⁰⁴ *Id.*

¹⁰⁵ See Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTb, FCC (Feb. 4, 1998); see Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTb, FCC (Jan. 18, 2002).

¹⁰⁶ See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth (continued....)

Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹⁰⁷ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁰⁸ The SBA has approved these small business size standards in the context of LMDS auctions.¹⁰⁹ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

37. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹¹⁰ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).¹¹¹ In the present context, we will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.¹¹² 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 proposed herein.

38. **1.4 GHz Band Licensees.** The Commission conducted an auction of 64 1.4 GHz band licenses¹¹³ in 2007.¹¹⁴ In that auction, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed \$15 million but do not exceed \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.¹¹⁵ Neither of the two winning bidders sought designated entity status.¹¹⁶

39. **Incumbent 24 GHz 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 Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.¹¹⁷ The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹¹⁸ and TRW, Inc. It is

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Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, ¶ 348 (1997) (“*LMDS Second Report and Order*”).

¹⁰⁷ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, ¶ 348.

¹⁰⁸ See *id.*

¹⁰⁹ See *Alvarez to Phythyon Letter 1998*.

¹¹⁰ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

¹¹¹ BETRS is defined in §§ 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

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

¹¹³ See “*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007*,” Public Notice, 21 FCC Rcd 12393 (WTB 2006).

¹¹⁴ See “*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69*,” Public Notice, 22 FCC Rcd 4714 (2007) (“*Auction No. 69 Closing PN*”).

¹¹⁵ *Auction No. 69 Closing PN*, Attachment C.

¹¹⁶ See *Auction No. 69 Closing PN*.

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

¹¹⁸ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose (continued....)

our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

40. **Future 24 GHz Licensees.** With respect to new applicants in the 24 GHz band, we have defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million.¹¹⁹ “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹²⁰ The SBA has approved these definitions.¹²¹ The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

41. **Broadband Radio Service and Educational Broadband Service.** Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”)).¹²² In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹²³ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.¹²⁴ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.¹²⁵ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and

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license has been modified to require relocation to the 24 GHz band.

¹¹⁹ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules To License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, 16967, ¶ 77 (2000) (“*24 GHz Report and Order*”); see also 47 C.F.R. § 101.538(a)(2).

¹²⁰ *24 GHz Report and Order*, 15 FCC Rcd at 16967, para. 77; see also 47 C.F.R. § 101.538(a)(1).

¹²¹ See Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

¹²² *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, ¶ 7 (1995) (“*MDS Auction R&O*”).

¹²³ 47 C.F.R. § 21.961(b)(1).

¹²⁴ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard.

¹²⁵ Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice*, 24 FCC Rcd 8277 (2009).

do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.¹²⁶ Auction 86 concluded in 2009 with the sale of 61 licenses.¹²⁷ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

42. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.¹²⁸ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."¹²⁹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹³⁰ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹³¹ 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.¹³² Thus, the majority of these firms can be considered small.

43. **Cable Television Distribution Services.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

¹²⁶ *Id.* at 8296.

¹²⁷ Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice*, 24 FCC Rcd 13572 (2009).

¹²⁸ The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

¹²⁹ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

¹³¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹³² *Id.* An additional 61 firms had annual receipts of \$25 million or more.

Transmission facilities may be based on a single technology or a combination of technologies.”¹³³ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹³⁴ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹³⁵ 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.¹³⁶ Thus, the majority of these firms can be considered small.

44. **Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.¹³⁷ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹³⁸ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹³⁹ Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.¹⁴⁰ Thus, under this second size standard, most cable systems are small.

45. **Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁴¹ 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.¹⁴² Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹⁴³ We

¹³³ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition): <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

¹³⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹³⁶ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

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

¹³⁸ 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.

¹³⁹ 47 C.F.R. § 76.901(c).

¹⁴⁰ Warren Communications News, *Television & Cable Factbook 2008*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

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

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

¹⁴³ 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.

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,¹⁴⁴ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. **Open Video Systems.** The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.¹⁴⁵ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹⁴⁶ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”¹⁴⁷ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹⁴⁸ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹⁴⁹ 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.¹⁵⁰ Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.¹⁵¹ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.¹⁵² The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

47. **Cable Television Relay Service.** This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹⁵³ The

¹⁴⁴ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

¹⁴⁵ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report*, 24 FCC Red 542, 606 ¶ 135 (2009) (“*Thirteenth Annual Cable Competition Report*”).

¹⁴⁶ See 47 U.S.C. § 573.

¹⁴⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

¹⁴⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁵⁰ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁵¹ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsccer.html>.

¹⁵² See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

¹⁵³ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹⁵⁴ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹⁵⁵ 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.¹⁵⁶ Thus, the majority of these firms can be considered small.

48. **Multichannel Video Distribution and Data Service.** MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.¹⁵⁷ These definitions were approved by the SBA.¹⁵⁸ On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.¹⁵⁹ Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.¹⁶⁰

49. **Internet Service Providers.** The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,¹⁶¹ which has an SBA small business size standard of 1,500 or fewer employees.¹⁶² The latter are within the category of All Other

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

¹⁵⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁵⁶ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁵⁷ *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2-12.7 GHz Band*, ET Docket No. 98-206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, ¶ 252 (2002).

¹⁵⁸ See Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

¹⁵⁹ See "Multichannel Video Distribution and Data Service Auction Closes," Public Notice, 19 FCC Rcd 1834 (2004).

¹⁶⁰ See "Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63," Public Notice, 20 FCC Rcd 19807 (2005).

¹⁶¹ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁶² 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

Telecommunications,¹⁶³ which has a size standard of annual receipts of \$25 million or less.¹⁶⁴ The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.¹⁶⁵ That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.¹⁶⁶ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.¹⁶⁷ Consequently, we estimate that the majority of ISP firms are small entities.

50. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

51. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

52. As discussed above, the NPRM seeks comment on a number of specific reforms to contain the growth in the legacy high-cost support mechanisms and identify savings that can be shifted toward broadband.¹⁶⁸ Under the Commission's current rules, eligible telecommunications carriers (ETCs) file certain information with the Commission, the Universal Service Administrative Company (USAC), and/or the National Carrier Exchange Association (NECA) that is used to determine the amount of high-cost support each ETC receives. The proposals in the NPRM to cap or eliminate support, if eventually adopted, are not likely to substantially change the current reporting, recordkeeping, and compliance requirements, and would, in some cases, reduce such burdens. The proposal to shift rate-of-return carriers to incentive regulation likely would result in certain one-time reporting requirements related to the conversion, such as establishing initial price cap indexes for price cap baskets.¹⁶⁹ In addition, some ongoing reporting, recordkeeping and other compliance requirements may change after the conversion from rate-of-return regulation, but may result in less burdensome requirements, in some cases. We do not have an estimate of potential reporting, recordkeeping, and compliance burdens, because it is too speculative at this time to anticipate the number of carriers that would be required to convert to incentive regulation, or what type of incentive regulation would be required. We anticipate that commenters will provide the Commission with reliable information on any costs and burdens on small entities.

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

¹⁶³ U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

¹⁶⁴ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

¹⁶⁵ U.S. Census Bureau, "2002 NAICS Definitions, "518111 Internet Service Providers"; <http://www.census.gov/eped/naics02/def/NDEF518.HTM>.

¹⁶⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

¹⁶⁷ An additional 45 firms had receipts of \$25 million or more.

¹⁶⁸ See *supra* para. 3.

¹⁶⁹ See NPRM, para. 55 note 122.

53. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁷⁰

54. As discussed above, the NPRM seeks comment on capping legacy high-cost support provided to incumbent telephone companies; shifting rate-of-return carriers to incentive regulation and converting interstate common line support to a frozen amount per line; eliminating interstate access support; and eliminating high-cost support for competitive eligible telecommunications carriers.¹⁷¹ The NPRM seeks comment generally on the proposed universal service reforms and carriers' rates under the Commission's current pricing rules, and specifically seeks comment on whether there are special considerations resulting from the operation of the NECA pool that would unfairly advantage or disadvantage certain carriers.¹⁷² The NPRM also seeks comment on the costs and benefits that would be realized by converting all rate-of-return carriers to price cap or other incentive regulation.¹⁷³ We anticipate that the record will reflect whether the overall benefits of such a requirement would outweigh the burdens on small entities, and if so, suggest alternative ways in which the Commission could lessen the overall burdens on small entities. We encourage small entity comment.

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

55. None.

¹⁷⁰ 5 U.S.C. § 603.

¹⁷¹ See *supra*, para. 3.

¹⁷² See NPRM, para. 54. The NECA pool is composed of rate-of-return carriers that generally are much smaller than the price cap carriers.

¹⁷³ See NPRM, para. 55.

APPENDIX B

Comments of 61 Economists

Comments of 61 Concerned Economists

Using Procurement Auctions to Allocate Broadband Stimulus Grants

Submitted to the National Telecommunications Information Agency (NTIA)
and Rural Utilities Service (RUS)

April 13, 2009

Contacts:

Paul Milgrom

Economics Department
Stanford University
579 Serra Mall at Galvez
Stanford, CA 94305
milgrom@stanford.edu

Gregory Rosston

Stanford Institute for Economic Policy Research
Stanford University
579 Serra Mall at Galvez
Stanford, CA 94305
grosston@stanford.edu

Andrzej Skrzypacz

Graduate School of Business
Stanford University
350 Memorial Way
Stanford, CA 94305
andy@gsb.stanford.edu

Scott Wallsten

Technology Policy Institute
1401 Eye St., NW
Washington, DC 20005
scott@wallsten.net

Executive Summary

The signatories to this document are economists who have studied telecommunications, auctions, and competition policy.¹ While we may disagree about the stimulus package, we believe that it is important to implement mechanisms that make stimulus spending as efficient as possible. To that end, we have come together to encourage the National Telecommunications Information Agency (NTIA) and Rural Utilities Service (RUS) to adopt auction mechanisms to allocate broadband stimulus grants.

The broadband stimulus NOI asks which mechanisms NTIA and RUS should use to distribute grants and how those mechanisms address shortcomings in traditional grant and loan programs. In this note we explain why procurement auctions are more efficient and more consistent with the stimulus goals of allocating funds quickly than a traditional grant review process. We recommend that NTIA/RUS use procurement auctions to distribute at least part of the stimulus funds.

The American Recovery and Reinvestment Act (ARRA) requires NTIA/RUS to distribute \$7.2 billion in broadband subsidies. The broadband component of the Act has dual, and not entirely consistent, objectives of providing immediate economic stimulus and improving broadband service. NTIA/RUS faces a formidable challenge in determining how to spend the money quickly and efficiently in ways that meet these goals. The traditional grant application process is long, complicated, and involves subjective and arbitrary decisions regarding which projects to fund. In other words, requesting and reviewing grant applications is not an effective way to implement the plan.

Procurement auctions, in contrast, provide a mechanism that can allocate grant money quickly, efficiently, and according to well-defined rules. As a result, procurement auctions offer NTIA/RUS the most promising method of maximizing broadband improvement while also creating some level of “temporary, timely, and targeted” stimulus. We therefore strongly recommend that NTIA/RUS adopt procurement auctions as its preferred method of distributing grants.

This memo has three parts. First, it explains why the traditional grant application process is unsuitable for this task and why procurement auctions are better suited. Second, it sketches out a procurement auction plan. This plan is intended to be a starting point from which auction design experts would proceed to build and implement a fully functional auction. Finally, we explain that even if policymakers are skeptical of procurement auctions, one could be implemented quickly as part of an initial tranche of stimulus funding in order to test its efficacy relative to traditional approaches. This approach would allow NTIA/RUS to quickly expand upon or modify the procurement auction program in subsequent funding rounds.

¹ The analysis and opinions here in are the sole responsibility of the signatories to these comments. The signatories are not appearing on behalf of any other person or entity and have received no compensation for the production of these comments.

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I. Introduction

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³ Section 5a asks: “What mechanisms for distributing stimulus funds should be used by NTIA and USDA in addition to traditional grant and loan programs?” Section 5b asks: “How would these mechanisms address shortcomings, if any, in traditional grant or loan mechanisms in the context of the Recovery Act?” Because the legislation appears to forbid the use of demand-side vouchers for the vast majority of the stimulus money, we have focussed on supply-side mechanisms.

⁴ The term “reverse auction” has been used in the context of universal service as a synonym for procurement auction.