

had employment of 1,000 employees or more.³⁵ 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.³⁶ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.³⁷ Thus, we estimate that the majority of wireless firms are small.

16. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).³⁸ Prior to that time, such firms were within the now-superseded category of “Paging.”³⁹ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁴⁰ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year.⁴¹ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁴² Thus, we estimate that the majority of paging firms are small.

17. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁴³ 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.⁴⁴ The SBA has approved this definition.⁴⁵ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985

³⁵ *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.”

³⁶ 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).

³⁷ *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.”

³⁸ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”;
<http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

³⁹ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”;
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴⁰ 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).

⁴¹ 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).

⁴² *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.”

⁴³ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Second Report and Order*, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (“*Paging Second Report and Order*”); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, ¶¶ 98-107 (1999).

⁴⁴ *Paging Second Report and Order*, 12 FCC Rcd at 2811, ¶ 179.

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

were sold.⁴⁶ Fifty-seven companies claiming small business status won 440 licenses.⁴⁷ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁴⁸ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁴⁹

18. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of “paging and messaging” services.⁵⁰ Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.⁵¹ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition..

19. *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).⁵² Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁵³ According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.⁵⁴ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.⁵⁵ We have estimated that 222 of these are small under the SBA small business size standard.

20. *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.⁵⁶ 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.⁵⁷ These small business

⁴⁶ See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁴⁷ See *id.*

⁴⁸ See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁴⁹ See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁵⁰ “Trends in Telephone Service” at Table 5.3.

⁵¹ “Trends in Telephone Service” at Table 5.3.

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

⁵³ *Id.*

⁵⁴ “Trends in Telephone Service” at Table 5.3.

⁵⁵ “Trends in Telephone Service” at Table 5.3.

⁵⁶ 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).

⁵⁷ See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

size standards, in the context of broadband PCS auctions, have been approved by the SBA.⁵⁸ 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.⁵⁹ In 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.⁶⁰

21. 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.⁶¹ 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 winning bidders for 217 licenses.⁶² 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 71.⁶³ Of the 14 winning bidders, six were designated entities.⁶⁴ In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.⁶⁵

22. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.⁶⁶ This auction, which was 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.⁶⁷ Four winning bidders that identified themselves as very small businesses won 17

⁵⁸ See *Alvarez Letter 1998*.

⁵⁹ FCC News, “Broadband PCS, D, E and F Block Auction Closes,” No. 71744 (rel. Jan. 14, 1997).

⁶⁰ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

⁶¹ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

⁶² See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

⁶³ See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

⁶⁴ *Id.*

⁶⁵ 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”).

⁶⁶ See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

⁶⁷ *Id.* at 23 FCC Rcd at 7521-22.

licenses.⁶⁸ 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.

23. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.⁶⁹ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁷⁰ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.⁷¹ 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.⁷² 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.⁷³ The SBA has approved these small business size standards.⁷⁴ A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁷⁵ Three of these claimed status as a small or very small entity and won 311 licenses.

24. *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.⁷⁶ Bidding credits for designated entities were not available in Auction 77.⁷⁷ 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

⁶⁸ 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).

⁶⁹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁷⁰ See “Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674,” *Public Notice*, PNWL 94-004 (rel. Aug. 2, 1994); “Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787,” *Public Notice*, PNWL 94-27 (rel. Nov. 9, 1994).

⁷¹ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (“*Narrowband PCS Second Report and Order*”).

⁷² *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

⁷³ *Id.*

⁷⁴ See *Alvarez Letter 1998*.

⁷⁵ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

⁷⁶ 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).

⁷⁷ *Id.* at 6685.

area totaling \$25,002.⁷⁸

25. *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.⁷⁹ 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.⁸⁰

26. 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 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.

27. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁸¹ private operational-fixed,⁸² and broadcast auxiliary radio services.⁸³ 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.⁸⁴ 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

⁷⁸ 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).

⁷⁹ See 13 C.F.R. § 121.201, NAICS code 517210.

⁸⁰ See generally 13 C.F.R. § 121.201.

⁸¹ See 47 C.F.R. §§ 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

⁸² 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.

⁸³ 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.

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

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.

28. *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.⁸⁵ The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁸⁶ 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.⁸⁷ The SBA has approved these small business size standards in the context of LMDS auctions.⁸⁸ 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.

29. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.⁸⁹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).⁹⁰ 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.⁹¹ 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.

30. *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”).⁹² In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross

⁸⁵ 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 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 Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, ¶ 348 (1997) (“*LMDS Second Report and Order*”).

⁸⁶ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, ¶ 348.

⁸⁷ See *id.*

⁸⁸ See *Alvarez to Phythyon Letter 1998*.

⁸⁹ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

⁹⁰ BETRS is defined in §§ 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

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

⁹² *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*”).

revenues of no more than \$40 million in the previous three calendar years.⁹³ 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.⁹⁴ 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.⁹⁵ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and 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.⁹⁶ Auction 86 concluded in 2009 with the sale of 61 licenses.⁹⁷ 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.

31. 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.⁹⁸ 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.”⁹⁹ 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

⁹³ 47 C.F.R. § 21.961(b)(1).

⁹⁴ 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.

⁹⁵ 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).

⁹⁶ *Id.* at 8296.

⁹⁷ 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).

⁹⁸ 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.

⁹⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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.¹⁰⁰ 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.¹⁰¹ 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.¹⁰² Thus, the majority of these firms can be considered small.

32. *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. Transmission facilities may be based on a single technology or a combination of technologies.”¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶ Thus, the majority of these firms can be considered small.

33. *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.¹⁰⁷ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹⁰⁸ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁰⁹

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

¹⁰¹ 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).

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

¹⁰³ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

¹⁰⁵ 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).

¹⁰⁶ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁰⁷ 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).

¹⁰⁸ 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.

¹⁰⁹ 47 C.F.R. § 76.901(c).

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.¹¹⁰ Thus, under this second size standard, most cable systems are small.

34. *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.”¹¹¹ 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.¹¹² Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹¹³ 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,¹¹⁴ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

35. *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.¹¹⁵ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹¹⁶ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”¹¹⁷ 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.¹¹⁸ According to Census Bureau data

¹¹⁰ 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.

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

¹¹² 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).

¹¹³ 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.

¹¹⁴ 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).

¹¹⁵ 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 Rcd 542, 606 ¶ 135 (2009) (“*Thirteenth Annual Cable Competition Report*”).

¹¹⁶ See 47 U.S.C. § 573.

¹¹⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹¹⁹ 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.¹²⁰ 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.¹²¹ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.¹²² 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.

36. *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.”¹²³ 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 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.¹²⁴ 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.¹²⁵ 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.¹²⁶ Thus, the majority of these firms can be considered small.

37. *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.¹²⁷ These

¹¹⁹ 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).

¹²⁰ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹²¹ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

¹²² 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.

¹²³ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

¹²⁵ 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).

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

¹²⁷ *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* (continued....)

definitions were approved by the SBA.¹²⁸ 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.¹²⁹ 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.¹³⁰

38. *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,¹³¹ which has an SBA small business size standard of 1,500 or fewer employees.¹³² The latter are within the category of All Other Telecommunications,¹³³ which has a size standard of annual receipts of \$25 million or less.¹³⁴ The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.¹³⁵ 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.¹³⁶ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999.¹³⁷ Consequently, we estimate that the majority of ISP firms are small entities.

39. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: "This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or

(Continued from previous page)

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).

¹²⁸ 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).

¹²⁹ See "Multichannel Video Distribution and Data Service Auction Closes," Public Notice, 19 FCC Rcd 1834 (2004).

¹³⁰ 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).

¹³¹ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

¹³³ U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

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

¹³⁵ U.S. Census Bureau, "2002 NAICS Definitions, "518111 Internet Service Providers"; <http://www.census.gov/eped/naics02/def/NDEF518.HTM>.

¹³⁶ 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).

¹³⁷ An additional 45 firms had receipts of \$25 million or more.

more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”¹³⁸ This category includes Electric Power Distribution, Hydroelectric Power Generation, Fossil Fuel Power Generation, Nuclear Electric Power Generation, and Other Electric Power Generation. The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”¹³⁹ According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.¹⁴⁰ Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

40. *Natural Gas Distribution.* This economic census category comprises: “(1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.”¹⁴¹ The SBA has developed a small business size standard for this industry, which is: all such firms having 500 or fewer employees.¹⁴² According to Census Bureau data for 2002, there were 468 firms in this category that operated for the entire year.¹⁴³ Of this total, 424 firms had employment of fewer than 500 employees, and 18 firms had employment of 500 to 999 employees.¹⁴⁴ Thus, the majority of firms in this category can be considered small.

41. *Water Supply and Irrigation Systems.* This economic census category “comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems.”¹⁴⁵ The SBA has developed a small business size standard for this industry, which is: all such firms having \$6.5 million or less in annual receipts.¹⁴⁶ According to Census Bureau data for 2002, there

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

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

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

¹⁴¹ U.S. Census Bureau, 2007 NAICS Definitions, “221210 Natural Gas Distribution”; <http://www.census.gov/epcd/naics02/def/ND221210.HTM>.

¹⁴² 13 C.F.R. § 121.201, NAICS code 221210.

¹⁴³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, “Establishment and Firm Size: 2002 (Including Legal Form of Organization),” Table 5, NAICS code 221210 (issued November 2005).

¹⁴⁴ *Id.* An additional 26 firms had employment of over 1,000 employees.

¹⁴⁵ U.S. Census Bureau, 2007 NAICS Definitions, “221310 Water Supply and Irrigation Systems” (partial definition); <http://www.census.gov/naics/2007/def/ND221310.HTM>.

¹⁴⁶ 13 C.F.R. § 121.201, NAICS code 221310.

were 3,830 firms in this category that operated for the entire year.¹⁴⁷ Of this total, 3,757 firms had annual sales of less than \$5 million, and 37 firms had sales of \$5 million or more but less than \$10 million.¹⁴⁸ Thus, the majority of firms in this category can be considered small.

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

42. Should the Commission adopt the proposed regulations concerning access to poles, ducts, conduits, and rights-of-way, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners and attaching entities. In particular, if the Commission adopts rules governing the timing of pole attachment preparation (i.e., survey and make-ready), as opposed to resolution on a case-specific complaint basis, reporting, recordkeeping or other compliance requirements could change.¹⁴⁹ Examples of specific topics where recordkeeping, reporting, or compliance requirements could change by virtue of Commission action include: (1) searches and surveys of both poles and conduits, including information management; (2) performance of make-ready work, including timeliness, safety, capacity, and the use of boxing and extension arms; and (3) the use of qualified third-party contract workers.¹⁵⁰

43. Should the Commission alter the enforcement process, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping, or other compliance requirements for pole owners and attaching entities. In particular, if the Commission eliminates the 30-day requirement in rule 1.404(m), a cable television operator or telecommunications carrier would no longer be required to file a complaint that it was denied access to a pole, duct, conduit or right-of-way despite a request made pursuant to section 47 USC § 224(f) within 30 days of the denial.¹⁵¹ If the Commission adopts a penalty regime for unauthorized attachments similar to Oregon's, pole owners might be required to notify occupiers of alleged violations, and to allow the occupiers an opportunity to correct violations or submit a plan for correction, before pursuing relief under the Commission's rules.¹⁵² If the Commission modifies the "sign and sue" rule, such action might require attachers to provide notice during contact negotiations of terms they consider unreasonable or discriminatory.¹⁵³

44. Should the Commission alter the pole attachment rate structure, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners and attaching entities. For example, if the Commission were to adopt a uniform rate for all pole attachments used for broadband Internet access service, providers of such services might be required to record and report where such service is offered.¹⁵⁴ Changes to reporting, recordkeeping or other compliance requirements could either be new (e.g., if telecommunications carriers begins to record or report where they offer broadband Internet access service) or could reconfigure existing requirements (e.g., if cable television systems begin to record and report where they or their lessees offer broadband

¹⁴⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, "Establishment and Firm Size: 2002 (Including Legal Form of Organization)," Table 4, NAICS code 221310 (issued November 2005).

¹⁴⁸ *Id.* An additional 36 firms had annual sales of \$10 million or more.

¹⁴⁹ See Further Notice at paras. 29, 31.

¹⁵⁰ See, e.g., Further Notice at paras. 35, 44.

¹⁵¹ See Further Notice at para. 82.

¹⁵² See Further Notice at para. 95.

¹⁵³ See Further Notice at para. 99.

¹⁵⁴ See Further Notice at para. 119.

Internet access service, but cease to record and report where they or their lessees offer telecommunications services). If the Commission initiates regulation of the rates, terms, and conditions of pole attachment by incumbent LECs, such regulation could increase reporting, recordkeeping or other compliance requirements for pole owners and incumbent LECs where incumbent LECs attach to poles owned by other utilities.¹⁵⁵

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

45. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁵⁶

46. The Commission proposes to adopt a specific timeline and several additional rules that provide a predictable, timely process for parties to seek and obtain pole attachments, while maintaining a utility's interest in preserving safety, reliability, and sound engineering. In the consideration of these proposals, the Commission seeks comment on whether adjustments based on the size of the utility to which the timeline applies are warranted.¹⁵⁷ For instance, the Commission asks whether small utilities should negotiate all timelines individually or have the option of adjusting the timeline based on the size of the attachment request, and whether steps taken to improve the availability of pole data could potentially burden small pole owners.¹⁵⁸ Further, the Commission does not have authority to regulate (and the proposed rules, thus, do not apply to) small utilities that are municipally or cooperatively owned.

47. The Commission also proposes to modify its rules to ensure that its enforcement process is suited to resolving access-related complaints and is fair to all parties.¹⁵⁹ In particular, the Commission proposes to remove the 30-day requirement to file a complaint from section 1.404(m), amend section 1.1410 to enumerate the remedies available to an attachor and provide for compensatory damages, and amend section 1.404(d) to require an attachor to object in writing, during contract negotiations, to provisions it considers unreasonable or discriminatory.¹⁶⁰ These modifications aim to streamline the complaint process and remove barriers to informal dispute resolution, and they should have minimal, if any, economic impact on small entities.¹⁶¹

48. Finally, the Commission proposes to promote broadband deployment and competition by reinterpreting the section 224(e) telecom rate in a way that yields pole rental rates that are as low and close to uniform as possible.¹⁶² The Commission considered requiring all categories of providers to pay a uniform rate that would have been higher than the cable rate but lower than the telecom rate, but found

¹⁵⁵ See Further Notice at paras. 142, 145.

¹⁵⁶ 5 U.S.C. § 603(c).

¹⁵⁷ See Further Notice at paras. 48-49.

¹⁵⁸ See Further Notice at paras. 48, 76.

¹⁵⁹ See Further Notice at para. 24.

¹⁶⁰ See Further Notice at paras. 82, 85-86, 107-08.

¹⁶¹ See, e.g., Further Notice at paras. 82

¹⁶² See Further Notice at paras. 122, 129.

that pursuing uniformity by increasing cable operators' pole rental rates would come at the cost of increased broadband prices and reduced incentives for deployment.¹⁶³ The Commission also seeks comment on alternative proposals that would establish a uniform rate for all pole attachments used to provide broadband, and on whether the rates paid by incumbent LEC attachers should also be subject to the "just and reasonable" rates provision in section 224(b).¹⁶⁴

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

49. None.

¹⁶³ See Further Notice at paras. 117-18.

¹⁶⁴ See Further Notice at paras. 119, 142.

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: Implementation of Section 224 of the Act, WC Docket No. 07-245, A National Broadband Plan for Our Future, GN Docket No. 09-51

To achieve our vital goal of ubiquitous broadband, and to promote investment, competition, job creation, and our global competitiveness, we must ensure that the process for deploying broadband infrastructure is as efficient and streamlined as possible.

The National Broadband Plan identified reform in pole attachment rules as an important step in lowering the costs of broadband investment, and encouraging the deployment of new facilities. Today's action -- an *Order* as well as *Further Notice* -- represents more concrete progress towards achieving our Nation's vital broadband goals.

Timely, economical access to poles is essential to wired and wireless broadband deployment. The *Order* we adopt today sets out many of the specifics that will encourage investment and deployment.

Section 224 of the Communications Act guarantees cable operators and telecommunications carriers non-discriminatory access to poles, and directs the Commission to ensure that the rates, terms, and conditions for pole attachments are just and reasonable. Today's *Order* clarifies that these providers have a right to timely access and to use the same space- and cost-saving techniques that pole owners use, such as placing attachments on both sides of a pole.

The National Broadband Plan demonstrated that the U.S. is lagging globally in broadband, and that rapid progress is essential to our global competitiveness and to U.S. world leadership in innovation in the 21st century. The National Broadband Plan also demonstrated that there's no silver bullet to achieve these goals -- indeed, that many key rules and policies will involve the 'blood and guts' of broadband deployment. Our *Order* today is in this category -- I believe it will yield real results for real people: faster, cheaper, and more widely available broadband.

And the *Further Notice* we adopt sets the stage for the Commission to address additional essential topics in the near future -- such as a new methodology for setting pole rental rates, improved enforcement processes, and specific timelines for pole attachments. The item also recognizes that it is essential to maintain safety, reliability, and sound engineering practices as we work to improve the pole access process. We will continue to carefully consider suggestions from the utilities on these and other matters.

As this item moves forward, I encourage everyone -- pole owners, attachers, and customers -- to be active participants in the process. We welcome and need your thoughtful comments and constructive suggestions to ensure that broadband infrastructure is deployed quickly, safely, and economically, which will promote competition and benefit all consumers.

I know that staff has worked long and hard on this item. I applaud their efforts, thank them for what has been accomplished, and look forward to completing this rulemaking.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Implementation of Section 224 of the Act, WC Docket No. 07-245, A National Broadband Plan for Our Future, GN Docket No. 09-51

There may be those who think the issues surrounding pole attachments are less than totally captivating and compelling, but that wouldn't be us, would it? "In-the-weeds" though it may often be, good pole attachment policy is integral to ensuring ubiquitous and robust broadband deployment. I may not have been a believer when I walked through these portals nine years ago, but I'm a believer now.

I am pleased that the National Broadband Plan recognizes, and places a priority on, these issues. The Commission has had opportunities to get this done before and somehow we didn't. So I am pleased with today's *Order and Further Notice of Proposed Rulemaking* and hope that the Commission will move forward expeditiously with this proceeding.

The Order correctly clarifies the statutory right of pole attachers to non-discriminatory and timely access to poles. And I am pleased with the *Further Notice of Proposed Rulemaking's* thorough inquiry into pole attachment access, enforcement and rates. I look forward to quickly completing a record upon which the Commission can act, and I am pleased to support this item.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Implementation of Section 224 of the Act, WC Docket No. 07-245, A National Broadband Plan for Our Future, GN Docket No. 09-51

While not flashy, the statute and applicable rules relating to pole attachments are important pieces of the broadband deployment puzzle. Section 224 of the Communications Act sets forth the requirements for access to poles, ducts, conduits and rights-of-way for both cable television systems and telecommunications carriers (collectively “attachers”). Our action today seeks to provide immediate clarity on some issues that have impeded broadband deployment, while also seeking more advice to help us build a better record for important decisions to come.

Under Section 224(f)(1), a utility is required to provide access on a nondiscriminatory basis. Not surprisingly, there has been some confusion surrounding the meaning of “nondiscriminatory” in the context of Section 224. Today’s order clarifies that “nondiscriminatory” means that a pole owner must allow an attacher to use space- and cost-saving techniques when practical and consistent with a pole owner’s use of those techniques. This holding, however, does not take away any statutory rights of utilities to limit access when ensuring safety, reliability and sound engineering. Additionally, the order clarifies that Section 224’s use of the term “just and reasonable access” includes timely preparation of the poles for attachment, commonly referred to as the “make-ready” process.

As interpreted by the Commission in the past, Section 224 embodies terms that have resulted in different treatment for cable systems and telecommunications service providers when they are seeking to attach to poles. I note that the disparities in this area highlight the overall need to streamline and provide parity wherever legally sustainable. As the stovepipe regulations of yesteryear become increasingly burdensome, we should strive to modernize our regulations so that similar offerings are treated equally. While, as a general rule, I favor parity of regulation for similar providers of services, at the same time, we must meet our statutory obligations. I will keep this in mind as comments are filed pursuant to the Further Notice of Proposed Rulemaking (FNPRM).

I thank Chairman Genachowski for his leadership in putting this topic at the front end of his broadband agenda. I also thank the staff in the Wireline Competition Bureau for their diligence on this order and FNPRM. Both documents are well written and thorough. With regard to the FNPRM, I recognize that some may have wished that some of the issues in the FNPRM actually be in the order rather than put out for further comment, especially regarding rates. However, the Chairman was wise to seek further comment on these issues so that all stakeholders can have one more opportunity to propose creative ideas and set forth additional statutory analysis. Such thoroughness will put any final comprehensive order on a solid legal footing.

In sum, I do recognize that Section 224(c) limits the Commission’s action on pole attachment issues to areas of the country where such access issues are not regulated by a State. Nevertheless, each step forward, where possible, can make a difference in overall broadband deployment. I look forward to analyzing the record and applicable law in this docket as we encourage the continued deployment of broadband throughout America.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: Implementation of Section 224 of the Act, WC Docket No. 07-245, A National Broadband Plan for Our Future, GN Docket No. 09-51

I support today's item because access to poles, conduits and rights-of-way are the "nuts and bolts" of how providers deploy broadband to America. With clear rules, those entities requiring access to facilities and those companies owning the facilities will each respectively understand their rights and obligations under the Communications Act. The result will be more predictable and timely access to facilities, as well as an opportunity for providers to better plan and execute deployment of their networks. This clarity will enable us to meet our goals of expeditiously reaching those consumers who don't currently have broadband available to them offering a competitive broadband service in some cases. Moreover, I agree with this item's conclusion that pole rental rates should not discourage providers from offering broadband service over their networks. This item puts forward specific rules for comment in order to achieve our goal to encourage broadband deployment throughout the country to benefit consumers, while balancing the safety and reliability concerns of facility owners. Once this record is complete, we should move forward promptly in order to promote broadband deployment and competition.

**STATEMENT OF
COMMISSIONER MEREDITH A. BAKER**

Re: Implementation of Section 224 of the Act, WC Docket No. 07-245, A National Broadband Plan for Our Future, GN Docket No. 09-51

This Order and Further Notice are an important step forward in crafting policy to ensure broadband access by all people of the United States. Nondiscriminatory access to poles, ducts, conduits, and rights-of-way at just and reasonable terms and conditions is critical for deployment and achieving the broadband goals set out by Congress. We already have a substantial record on pole attachments and I recognize that these issues are contentious. All sides of these disputes have legitimate concerns. While it is our responsibility to address the public policy interests of broadband deployment and promoting competition, we must also consider the critical interests of safety, reliability, and sound engineering practices.

I am pleased that this Order clarifies some basic rights and responsibilities under section 224. I also appreciate that the Further Notice tees up some difficult issues related to both rates and access. On rates in particular, I am interested in carefully considering how our policy proposals fit within the statutory framework laid out by Congress. With regard to access, protracted disputes between pole owners and attachers must not become obstacles to broadband deployment and competition, but any rules we adopt must be flexible enough to account for the unique safety considerations related to live electricity and other exceptional circumstances of pole infrastructure.

I encourage all parties affected by our pole attachment rules to actively and constructively engage in this next phase of the proceeding and I look forward to reviewing the record. And as always, I appreciate the hard work of the staff on this item.