

The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>82</sup> For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>83</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

27. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>84</sup> This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>85</sup> A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.<sup>86</sup> Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.<sup>87</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>88</sup>

28. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>89</sup> The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>90</sup> The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.<sup>91</sup> 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.<sup>92</sup> Sixty bidders claiming that they qualified as small businesses under the

<sup>82</sup> 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).

<sup>83</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-\\_skip=700&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>84</sup> *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, at paras. 291-95.

<sup>85</sup> *Id.* at 11068-70, para. 291.

<sup>86</sup> See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

<sup>87</sup> See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

<sup>88</sup> *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

<sup>89</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>90</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>91</sup> See *Alvarez Letter 1999*.

<sup>92</sup> “FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996,” *Public Notice*, 11 FCC Rcd 18599 (WTB 1996).

\$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup>

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 million size standard.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> 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. *700 MHz Guard Band Licensees.* In 2000, 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.<sup>99</sup> 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.<sup>100</sup> 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.<sup>101</sup> SBA approval of these definitions is not required.<sup>102</sup> An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>103</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these

<sup>93</sup> *Id.*

<sup>94</sup> 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, 11 FCC Rcd 18,637 (WTB 1996).

<sup>95</sup> See “Multi-Radio Service Auction Closes,” Public Notice, 17 FCC Rcd 1446 (WTB 2002).

<sup>96</sup> 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 (WTB 2000).

<sup>97</sup> See “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” Public Notice, 16 FCC Rcd 1736 (WTB 2000).

<sup>98</sup> See generally 13 C.F.R. § 121.201, NAICS code 517210.

<sup>99</sup> See *Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*746-764 MHz Band Second Report and Order*).

<sup>100</sup> See *746-764 MHz Band Second Report and Order*, 15 FCC Rcd at 5343, para. 108.

<sup>101</sup> See *id.*

<sup>102</sup> See *id.* at 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).

<sup>103</sup> See *700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (WTB 2000).

bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>104</sup>

32. *Air-Ground Radiotelephone Service.* The Commission has previously used 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.<sup>105</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.<sup>106</sup> A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>107</sup> These definitions were approved by the SBA.<sup>108</sup> In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

33. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>109</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>110</sup> The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.<sup>111</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

34. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers(except satellite)," which is 1,500 or fewer employees.<sup>112</sup> Census data for

<sup>104</sup> See *700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (WTB 2001).

<sup>105</sup> 13 C.F.R. § 121.201, NAICS codes 517210.

<sup>106</sup> *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket Nos. 03-103, 05-42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28-42 (2005).

<sup>107</sup> *Id.*

<sup>108</sup> See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, FCC (filed Sept. 19, 2005).

<sup>109</sup> The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

<sup>110</sup> BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

<sup>111</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>112</sup> 13 C.F.R. § 121.201, NAICS code 517210.

2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>113</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Additionally, the Commission notes that most applicants for recreational licenses in this category of wireless service are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>114</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

35. *Fixed Microwave Services.* Microwave services include common carrier,<sup>115</sup> private-operational fixed,<sup>116</sup> and broadcast auxiliary radio services.<sup>117</sup> They also include the Local Multipoint Distribution Service (LMDS),<sup>118</sup> the Digital Electronic Message Service (DEMS),<sup>119</sup> and the 24 GHz Service,<sup>120</sup> where licensees can choose between common carrier and non-common carrier status.<sup>121</sup> The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA’s definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons is considered small.<sup>122</sup> For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>123</sup> Of those 1,383,

<sup>113</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>114</sup> *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

<sup>115</sup> See 47 C.F.R. Part 101, Subparts C and I.

<sup>116</sup> See 47 C.F.R. Part 101, Subparts C and H.

<sup>117</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 C.F.R. Part 74. 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 TV pickups, which relay signals from a remote location back to the studio.

<sup>118</sup> See 47 C.F.R. Part 101, Subpart L.

<sup>119</sup> See 47 C.F.R. Part 101, Subpart G.

<sup>120</sup> See *id.*

<sup>121</sup> See 47 C.F.R. §§ 101.533, 101.1017.

<sup>122</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>123</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

36. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>124</sup> There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that standard.<sup>125</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>126</sup> Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>127</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

37. *32.39 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.<sup>128</sup> 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.<sup>129</sup> The SBA has approved these small business size standards.<sup>130</sup> The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

38. *Wireless Cable Systems. 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)).<sup>131</sup> 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.<sup>132</sup> The BRS auctions

<sup>124</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

<sup>125</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>126</sup> *Id.*

<sup>127</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009); [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>128</sup> See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600 (1998).

<sup>129</sup> *Id.*

<sup>130</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

<sup>131</sup> *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, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>132</sup> 47 C.F.R. § 21.961(b)(1).

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.<sup>133</sup> 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.<sup>134</sup> 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.<sup>135</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>136</sup> 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.

39. 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.<sup>137</sup> 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."<sup>138</sup> For these services, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers(except satellite)," which is 1,500 or fewer employees.<sup>139</sup> To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that

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<sup>133</sup> 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 of 1500 or fewer employees.

<sup>134</sup> *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).

<sup>135</sup> *Id.* at 8296.

<sup>136</sup> *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).

<sup>137</sup> 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.

<sup>138</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers," (partial definition), [www.census.gov/naics/2007/def/ND517110.HTM#N517110](http://www.census.gov/naics/2007/def/ND517110.HTM#N517110).

<sup>139</sup> 13 C.F.R. § 121.201, NAICS code 517210.

operated that year.<sup>140</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications "firms" does not track the number of "licenses".

40. In the 1998 and 1999 LMDS auctions,<sup>141</sup> the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.<sup>142</sup> Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.<sup>143</sup> These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.<sup>144</sup> In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

41. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>145</sup> In the 218-219 MHz Report and Order and Memorandum Opinion and Order, the Commission established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.<sup>146</sup> A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.<sup>147</sup> These size standards will be used in future auctions of 218-219 MHz spectrum.

42. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers(except satellite)," which is 1,500 or fewer employees.<sup>148</sup> To gauge

<sup>140</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-\\_skip=700&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>141</sup> The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

<sup>142</sup> See *LMDS Order*, 12 FCC Rcd at 12545.

<sup>143</sup> *Id.*

<sup>144</sup> See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

<sup>145</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>146</sup> *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

<sup>147</sup> *Id.*

<sup>148</sup> 13 C.F.R. § 121.201, NAICS code 517210.

small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>149</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications "firms" does not track the number of "licenses". The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent<sup>150</sup> and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

43. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.<sup>151</sup> "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.<sup>152</sup> The SBA has approved these small business size standards.<sup>153</sup> These size standards will apply to the future auction, if held.

### 3. Satellite Service Providers

44. *Satellite Telecommunications Providers.* 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.<sup>154</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>155</sup>

45. 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."<sup>156</sup> Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.<sup>157</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>158</sup> Consequently, the Commission estimates that

<sup>149</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-skip=700&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en).

<sup>150</sup> Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

<sup>151</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); see also 47 C.F.R. § 101.538(a)(2).

<sup>152</sup> *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); see also 47 C.F.R. § 101.538(a)(1).

<sup>153</sup> See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

<sup>154</sup> 13 C.F.R. § 121.201, NAICS code 517410.

<sup>155</sup> 13 C.F.R. § 121.201, NAICS code 517919.

<sup>156</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications."

<sup>157</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en).

<sup>158</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-skip=900&-ds\\_name=EC0751SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=900&-ds_name=EC0751SSSZ4&-lang=en)

the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

46. The second category, i.e. “All Other Telecommunications” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes 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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>159</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>160</sup> Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.<sup>161</sup> Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

#### 4. Cable and OVS Operators

47. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

48. *Cable and Other Program Distributors.* 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.”<sup>162</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.<sup>163</sup> Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

49. *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.<sup>164</sup> Industry data indicate that, of 1,076

<sup>159</sup> See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>

<sup>160</sup> U.S. Census [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>161</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=900&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>162</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers,” (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110> (last visited Oct. 21, 2009).

<sup>163</sup> U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-fds\\_name=EC0700A1&-\\_skip=700&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en).

<sup>164</sup> 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).

cable operators nationwide, all but eleven are small under this size standard.<sup>165</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>166</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.<sup>167</sup> Thus, under this second size standard, most cable systems are small.

50. *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."<sup>168</sup> 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.<sup>169</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>170</sup> 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,<sup>171</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

51. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.<sup>172</sup> 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.<sup>173</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>174</sup> OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."<sup>175</sup> 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 the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority

<sup>165</sup> See BROADCASTING & CABLE YEARBOOK 2006, at A-8, C-2 (Harry A. Jessell ed., 2005) (data current as of June 30, 2005); TELEVISION & CABLE FACTBOOK 2006, at D-805 to D-1857 (Albert Warren ed., 2005).

<sup>166</sup> 47 C.F.R. § 76.901(c).

<sup>167</sup> TELEVISION & CABLE FACTBOOK 2006, at F-2 (Albert Warren ed., 2005) (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>168</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1–3.

<sup>169</sup> 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

<sup>170</sup> See BROADCASTING & CABLE YEARBOOK 2006, at A-8, C-2 (Harry A. Jessell ed., 2005) (data current as of June 30, 2005); TELEVISION & CABLE FACTBOOK 2006, at D-805 to D-1857 (Albert Warren ed., 2005).

<sup>171</sup> 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).

<sup>172</sup> See 47 U.S.C. § 573.

<sup>173</sup> 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, ¶ 135.

<sup>174</sup> See 47 U.S.C. § 573.

<sup>175</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

of these firms can be considered small.<sup>176</sup> In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>177</sup> Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>178</sup> 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, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.<sup>179</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

## 5. Electric Power Generation, Transmission and Distribution

52. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of “establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”<sup>180</sup> 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.”<sup>181</sup> According to Census Bureau data for 2007, there were 1,525 firms in this category that operated for the entire year.<sup>182</sup> 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 1,525 or fewer firms may be considered small under the SBA small business size standard.

## 6. Internet Service Providers, Web Portals and Other Information Services

53. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,<sup>183</sup> and (2) All Other Information Services.<sup>184</sup>

<sup>176</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-fds\\_name=EC0700A1&-geo\\_id=&-skip=600&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en).

<sup>177</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

<sup>178</sup> See *13th Annual 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.

<sup>179</sup> See <http://www.fcc.gov/mb/ovs/csovscer.html> (current as of February 2007).

<sup>180</sup> U.S. Census Bureau, 2002 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution,” <http://www.census.gov/epcd/naics02/def/NDEF221.HTM> (last visited Oct. 21, 2009).

<sup>181</sup> 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, n. 1.

<sup>182</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-ds\\_name=EC0722SSSZ4&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0722SSSZ4&-lang=en).

<sup>183</sup> 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

<sup>184</sup> 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

54. *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 facilities (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,<sup>185</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>186</sup> These are also labeled "broadband." The latter are within the category of All Other Telecommunications,<sup>187</sup> which has a size standard of annual receipts of \$25 million or less.<sup>188</sup> These are labeled non-broadband.

55. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees.<sup>189</sup> For the second category, the data show that 1,682 firms operated for the entire year.<sup>190</sup> Of those, 1,675 had annual receipts below \$25 million per year, and an additional two had receipts of between \$25 million and \$ 49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

56. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.<sup>191</sup> The SBA has developed a small business size standard for this category; that size standard is 500 employees<sup>192</sup>. Less than 500 employees is considered small.<sup>193</sup> According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with 500 to 999 employees.<sup>194</sup> Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

57. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments

<sup>185</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>186</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>187</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>188</sup> 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>189</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5171103 (released Nov. 19, 2010) (employment size). The data show only two categories within the whole: the categories for 1-4 employees and for 5-9 employees.

<sup>190</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5179191 (released Nov. 19, 2010) (receipts size).

<sup>191</sup> See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search>

<sup>192</sup> See [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf)

<sup>193</sup> 13 C.F.R. § 121.201, NAICS code 519130.

<sup>194</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=1000&-ds\\_name=EC0751SSSZ5&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ5&-_lang=en)

may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services.<sup>195</sup> The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts.<sup>196</sup> According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.<sup>197</sup> Of these, 6,726 had annual receipts of under \$25 million, and 155 had receipts between \$25 million and \$49,999,999 million.<sup>198</sup> Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

58. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”<sup>199</sup> Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts.<sup>200</sup> According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.<sup>201</sup> Of these, 334 had annual receipts of under \$5 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999.<sup>202</sup> Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

59. In the Notice, the Commission proposes additional or modified information collections that would impose further reporting and recordkeeping requirements on current Form 477 filers, including small entities. Specifically, the Notice invites comment on whether and how the Commission could collect data on the following additional or modified categories of data: (1) deployment, (2) subscription, (3) price, (4) service quality, and (5) ownership and contact information. The Commission also seeks comment on whether to collect “other data” such as socioeconomic and social metrics data to assess socially and economically disadvantaged parties. The Commission seeks further comment on the extent to which technological tools and use of commercial and publicly available data can reduce the burden of producing information. The Commission also seeks comment on how to streamline the process in collecting the data the Commission needs to inform its policymaking processes while minimizing the production burden on providers and the processing burden on the Commission. The Commission invites comments on the merits

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<sup>196</sup> 13 C.F.R. § 121.201, NAICS code 518210.

<sup>197</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=1000&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>198</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=1000&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ4&-_lang=en)

<sup>199</sup> U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

<sup>200</sup> 13 C.F.R. § 121.201, NAICS code 519190. See also [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf).

<sup>201</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=1200&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1200&-ds_name=EC0751SSSZ4&-_lang=en).

<sup>202</sup> See [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-\\_skip=1100&-ds\\_name=EC0751SSSZ4&-\\_lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1100&-ds_name=EC0751SSSZ4&-_lang=en).

and methodologies of such data collections to include suggestions and discussions of other alternatives not specifically discussed in the Notice that would meet the objectives of the Notice but would impose lesser burdens on smaller entities.

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

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

61. 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.<sup>203</sup>

62. In particular, the Commission seeks comment on whether it would be less burdensome for providers to submit address-level data with respect to the deployment and availability of services. The Commission also seeks comment on other ways that the Commission can ease the burden on small- and medium-sized providers.

63. Based on these questions, and the alternatives the Commission has discussed, the Commission anticipates that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband. The Commission welcomes proposals of alternatives from any of the approaches as described in Section A, *supra*.

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

64. None.

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<sup>203</sup> 5 U.S.C. § 603(c).

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

- Re: *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*; WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132.
- Re: *Review Of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10.

Commission policymaking is only as good as the facts and data on which our decisions are based. That's why data reform has been an important priority since I arrived here as Chairman. It's why it's vital that the Commission collect the data it needs to do its job and serve the public, why the Commission shouldn't waste resources collecting data it doesn't need, and why, wherever possible, we should use modern technology to increase the benefits of data collection and reduce the burdens.

It was with these principles in mind that I appointed Mary Beth Richards as Special Counsel for FCC Reform as one of my very first actions, and charged her and our FCC Reform Team, including Chief of our Office of Strategic Planning Paul de Sa, our new Chief Data Officer Greg Elin and the new data officers in the bureaus and offices, Managing Director Steven VanRoekel, and General Counsel Austin Schlick with conducting an agency-wide data review. This Data Innovation Initiative is a comprehensive effort to modernize and streamline how we collect, use, and disseminate data.

I am very pleased that in the first phase of the reform team's review, staff has identified 20 discrete data collections to target for elimination. These are collections that once made sense, but appear to have become unnecessary as technology, markets, and policies have evolved. Today, we are formally proposing the elimination of two of these—the comparably efficient interconnection and open network architecture reporting obligations—and I am instructing the FCC Reform Team and our data officers to move forward on the other 18, while continuing their agency-wide data review.

I'm also pleased to announce that today the Wireline Competition Bureau will be eliminating a separate outdated reporting requirement imposed on a carrier more than 20 years ago. That collection was imposed for reasons that no longer justify the costs it imposes on the carrier, or on the Commission.

We approach the review we launch today—of one of the FCC's most important data-gathering tools, Form 477—in the same spirit of efficient, effective governance. Since 2000, the FCC has relied on data gathered through Form 477 to inform its policies relating to voice and broadband services. In 2004 and in 2008, the Commission made modifications to parts of the Form 477 program in order to collect more information.

And now—in view of ongoing changes in technology and the marketplace, and questions raised about the existing Form—we ask stakeholders to help us take a comprehensive look at the Form 477 program and update its design to answer today's questions, not yesterday's. This review—another recommendation of the National Broadband Plan—will help us fulfill important statutory obligations, including promoting broadband in unserved areas, promoting competition, and ensuring public safety. It

will also ensure that we don't collect voice and broadband data that we no longer need.

These data efforts are just part of the FCC Reform Team's larger initiative to remove regulatory barriers to a thriving broadband economy. In the last year, the Commission has taken a number of actions to deliver on this goal, including expediting licensing of spectrum that can be used for broadband services; lifting restrictions on some mobile satellite spectrum that can be used for broadband; setting limits on how long localities can take to approve or deny tower sharing requests; significantly streamlining the E-Rate program's application forms; and making it easier for radio stations to certify compliance with our rules.

A few weeks ago, as part of this effort, we launched our biennial review of the FCC's telecommunications regulations to determine which of our regulations are no longer necessary due to competition. Tomorrow we will be hosting a conference with leaders from across the broadband marketplace to identify further opportunities to remove regulatory barriers to broadband buildout. And there is more to come, particularly when it comes to using technology to promote FCC reform and improved interaction with the public.

All of these efforts are in line with the President's recent executive order to ensure that our regulatory systems "use the best, most innovative, and least burdensome tools for achieving regulatory ends" in order to "promot[e] economic growth, innovation, competitiveness, and job creation." As I informed senior staff last week, I expect the FCC to perform its responsibilities consistent with the principles in the executive order.

In the months ahead, we will continue to look for opportunities to use modern technology and common sense to help make the FCC a model of excellence in government. I thank the data reform team for the important reforms it has already identified.

**CONCURRING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*; WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132.

Gathering good data—an issue near and dear to this Commissioner’s heart, as I know it is to the Chairman’s—is critical to the FCC’s ability to do its job. For far too many years, we moved away from this responsibility, relying less on our own analysis and substituting limited commercial data for our own. Certainly we should be smart, sparing and efficient about the information we collect to avoid undue burdens. But the public interest must always be our lodestar in these considerations. Consumers are certainly my first and foremost concern, but markets, too, rely on credible and reliable government data. How can a country dig its way out of a recession without solid economic indicators like unemployment numbers and GDP? As I’ve said before, if federal and state governments decided tomorrow to stop gathering data and regulating how it is reported, the U.S. economy would screech to a halt.

If we want the Internet economy to continue to drive growth and opportunity in this country, we must have regular, systematic reporting of high-quality broadband data. How will we know where to invest scarce public resources if we don’t know with any meaningful specificity where broadband is deployed? How can innovators and investors make informed decisions with regard to new technologies and applications if we don’t know the broadband speed that American consumers are actually getting? Without understanding the value proposition broadband offers—that is, the price per bit—how can we promote its adoption and ensure that no American is on the wrong side of the digital divide?

These are not new questions before the Commission. We have asked many of them twice before. In 2008, I concurred with the Commission’s further notice on many of these questions because I believed it was time then for a final Order detailing the kinds and amounts of data the Commission needs to protect American consumers. While I am more optimistic now that we will get action soon, consistency compels me to concur this time, too, on the first Notice before us today, the *Form 477 NPRM*. I look forward to the third time being the charm with a final Order in the very near term.

I vote to approve the second Notice, an NPRM proposing the elimination of legacy reporting obligations stemming from the *Computer Inquiries*. The Commission has already relieved carriers of the underlying obligations, partly through a controversial and altogether untidy “deemed granted” forbearance process. The original idea had been acquiring data to maintain competition. The forbearance process under two previous Commissions was tragically aimed at getting rid of both.

The history behind this item, though, begs a different question—not whether we are collecting data irrelevant to the Commission, but whether we have all the new data the Commission needs to understand what is going on in the world of business, technology and consumer information. I freely admit that the particular information here may be a vestige of a bygone era, but I only want to emphasize that ridding ourselves of unneeded data requirements is actually less important than guaranteeing we have the data we need.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

- Re: *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*; WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132.
- Re: *Review Of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10.

Many thanks to Mary Beth Richards and Greg Elin for your presentation. Your dedicated work in conducting a comprehensive review of the Commission's data collection obligations is appreciated. I wholeheartedly support reducing the Commission's regulatory burdens wherever possible, including eliminating certain reporting requirements. I am encouraged to hear that your team has already targeted 20 collections to discontinue soon.

In that spirit, I support the Notice of Proposed Rulemaking which proposes to eliminate the Commission's remaining *Computer III* requirements. Due to various reforms over the years, collection of this information may no longer be necessary, and it does not appear that the Commission relies on this data in its decision making process. In short, collection of this data is likely antiquated and burdensome. I commend the Chairman for taking this step to clear unnecessary regulatory underbrush.

In addition, I support the Notice of Proposed Rulemaking which seeks to modernize the FCC Form 477 Data Program. Given that the Form 477 process has not been reformed in more than 10 years, initiating this proceeding will hopefully result in a more efficient and effective program. It is important for the FCC to obtain appropriate and relevant data to help us make informed decisions, and this rulemaking will open the dialogue on this topic. However, we must ensure that we have adequate legal authority to require the collection of the information discussed in this notice. As such, I was encouraged that the Chairman agreed to ask about our legal authority throughout this rulemaking.

I am hesitant, however, about the section of the notice which discusses whether the FCC should collect broadband pricing information. Although such efforts may have the best of intentions, I am concerned that if the FCC ultimately decides that it should collect broadband pricing information, the process could lay the foundation for the FCC to engage in rate regulation of broadband Internet services in the future. I hope that doesn't happen. I will be interested to learn more about others' perspectives during the comment cycle. In sum, I do support our effort to modernize this process but we must be wary that we aren't taking one step forward and two steps back by reducing data collection requirements in some areas, but then imposing new and unnecessary burdens in other areas.

I thank Sharon Gillett and her team for their long hours working on these two notices, and I look forward to reviewing the record and working with my colleagues and stakeholders on these proceedings.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

- Re: *Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip; WC Docket No. 07-38; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190; Review of Wireline Competition Bureau Data Practices, WC Docket No. 10-132.*
- Re: *Review Of Wireline Competition Bureau Data Practices, WC Docket No. 10-132; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20, 98-10.*

Good policy must be informed by complete, accurate, and relevant information. We should be mindful, however, that the collection of data for accurate analysis occupies the resources of both industry and the Commission, and that ultimately, consumers and taxpayers are the ones who pay. Accordingly, it is appropriate for the FCC to periodically review the need for the information it requests. Where currently collected data is no longer relevant for the benefit of Congress, the Commission, or consumers, we should begin proceedings to explore the elimination of that information, as we do today, with respect to the CEI/ONA data.

Of course, to the extent that data from industry is required so that we can fulfill our statutory obligations, then it is important that we ensure that the information we obtain is sufficient for us to do so. As such, it is important to periodically assess whether the data we are collecting, relays the information we need to make good policy choices and to issue reports required by statute. With respect to the information we collect on the Form 477, which we use as our primary tool for analyzing the status of local telephone and broadband networks and services, I support the Notice's consideration of modifications to the types of data reported on the Form. As the Notice describes, our various duties to promote policies that ensure universal service, public safety, a competitive communications marketplace, and the reasonable and timely deployment of broadband networks, require that we have the data necessary to make informed decisions, and issue knowledgeable reports, just as Congress intended.

I believe it is appropriate for us to revisit the type of data we seek on the Form 477, given that both a GAO Report and the National Broadband Plan found that the data was insufficient, and limits our ability to fulfill certain of our policymaking and reporting duties. Certainly, we must balance the need for information with the burden that data collection may have on industry. The Notice recognizes this careful balance, by seeking guidance on the possible use and limitations of publicly available or third-party commercial data, to avoid such burdens on industry, including small businesses.

I am pleased that we are exploring the use of additional broadband data, such as pricing information, so that we can better assess affordable and comparable prices. As we consider explicitly supporting broadband networks and service in our USF/ICC Reform NPRM adopted today, it is important that we have the information necessary to determine whether rates in rural areas are comparable to rates in urban areas, so that we can assess whether we have met the goals of Section 254 for ensuring universal service. Furthermore, the Broadband Data Improvement Act, requires that we compare pricing for broadband service with other countries; thus, the collection of pricing information may be necessary to fulfill that obligation.

Finally, I am pleased that we are undertaking a significant effort to allow the public to access the data we collect, as well as our analysis of that information, through our website. It is important that as we are informed, we use every tool at our disposal to inform the public.

Many thanks are due to Mary Beth, Greg and the other data experts, for your work on our Data Innovation Initiative, as well as to the Wireline Competition Bureau for your work on the Form 477 and CEI/ONA Notices.

**STATEMENT OF  
COMMISSIONER MEREDITH ATTWELL BAKER**

- Re: *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*; WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132.
- Re: *Review Of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10.

I support the process to right-size our data collections and appreciate the comprehensive approach we are taking. I also support the specific decision to review the narrowband *Computer III* CEI and ONA requirements. This is an overdue and welcome step forward. I hope we use the same standard – whether the Commission relies on a submission in the course of its normal decision-making – to make more proposals to eliminate or scale back other outdated data submissions.

The Commission also proposes to potentially expand its data requirements associated with our broadband deployment reporting. I welcome all efforts to ensure that we have reliable and accurate data to inform our decision-making. In a number of places, the *Notice* proposes increases—potentially significant ones—in the type and scope of data gathering required. In the spirit of the broader data initiative, I believe the Commission should act judiciously and answer a few threshold questions before expanding any of our data collection obligations: What is the nexus between the data to be requested and our statutory responsibilities? Is this new data integral to fulfilling a statutory responsibility? Is the data gathering the best and least burdensome means to acquire the data?

I appreciate that many of these questions are explicitly raised in the *Notice*, and welcome the Chairman's recognition of the heavy burden well-intentioned data requests may have on industry. I will be watching this proceeding closely with particular attention on proposals surrounding broadband pricing and customer satisfaction metrics. Thank you.