

same meaning as the term “small-business concern” under the Small Business Act.²⁵ A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁶

14. **Small Businesses.** Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.²⁷

15. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁸ According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.²⁹ Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.³⁰ Thus, under this size standard, the majority of firms can be considered small.

16. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³¹ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.³² Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.³³ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Notice.

17. **Incumbent Local Exchange Carriers (incumbent LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴ According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.³⁵ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees

²⁵ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁶ See 15 U.S.C. § 632.

²⁷ See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://www.sba.gov/advo/stats/sbfaq.pdf> (accessed Dec. 2010).

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

²⁹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

³⁰ See *id.*

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

³² See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

³³ See *id.*

³⁴ See 13 C.F.R. § 121.201, NAICS code 517110.

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

and 301 have more than 1,500 employees.³⁶ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Notice.

18. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³⁷ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

19. **Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁹ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁴⁰ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.⁴¹ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴² In addition, 72 carriers have reported that they are Other Local Service Providers.⁴³ Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.⁴⁴ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

20. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁵ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of

³⁶ *See id.*

³⁷ 5 U.S.C. § 601(3).

³⁸ *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” *See* 15 U.S.C. § 632(a); *see also* 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

³⁹ *See* 13 C.F.R. § 121.201, NAICS code 517110.

⁴⁰ *See Trends in Telephone Service* at Table 5.3.

⁴¹ *See id.*

⁴² *See id.*

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ *See* 13 C.F.R. § 121.201, NAICS code 517110.

interexchange services.⁴⁶ Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁴⁷ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

21. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁸ According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.⁴⁹ Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.⁵⁰ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

22. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵¹ According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁵² Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.⁵³ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

23. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁴ According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁵⁵ Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.⁵⁶ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Notice.

24. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁷ According to Commission data, 284 companies reported that

⁴⁶ See *Trends in Telephone Service* at Table 5.3.

⁴⁷ See *id.*

⁴⁸ See 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁹ See *Trends in Telephone Service* at Table 5.3.

⁵⁰ See *id.*

⁵¹ See 13 C.F.R. § 121.201, NAICS code 517911.

⁵² See *Trends in Telephone Service* at Table 5.3.

⁵³ See *id.*

⁵⁴ See 13 C.F.R. § 121.201, NAICS code 517911.

⁵⁵ See *Trends in Telephone Service* at Table 5.3.

⁵⁶ See *id.*

⁵⁷ See 13 C.F.R. § 121.201, NAICS code 517110.

their primary telecommunications service activity was the provision of other toll carriage.⁵⁸ Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.⁵⁹ Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Notice.

25. **800 and 800-Like Service Subscribers.**⁶⁰ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶¹ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁶² According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.⁶³ We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

26. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.⁶⁴ Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.⁶⁵ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁶⁶ For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.⁶⁷ Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.⁶⁸ Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio

⁵⁸ See *Trends in Telephone Service* at Table 5.3.

⁵⁹ See *id.*

⁶⁰ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁶¹ See 13 C.F.R. § 121.201, NAICS code 517911.

⁶² See *Trends in Telephone Service* at Tables 18.7-18.10.

⁶³ See *id.*

⁶⁴ See 13 C.F.R. § 121.201, NAICS code 517210.

⁶⁵ U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁶⁶ 13 C.F.R. § 121.201, NAICS code 517210. 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).

⁶⁷ U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210" (issued Nov. 2010).

⁶⁸ *Id.* Available 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 "100 employees or more."

(SMR) Telephony services.⁶⁹ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁷⁰ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

27. **Broadband Personal Communications Service.** The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁷¹ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷² These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁷³ 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.⁷⁴ In 1999, the Commission re-auctioned 347 C, E, and F Block licenses.⁷⁵ There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.⁷⁶ Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. 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.⁷⁷ 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 71.⁷⁸ Of the 14 winning bidders, six were designated entities.⁷⁹ In 2008, the

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

⁷⁰ See *id.*

⁷¹ See generally *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

⁷² See generally *Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(2).

⁷³ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

⁷⁴ See FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

⁷⁵ See “C, D, E, and F Block Broadband PCS Auction Closes,” *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

⁷⁶ See “C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 2339 (2001).

⁷⁷ See “Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,” *Public Notice*, 20 FCC Rcd 3703 (2005).

⁷⁸ See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,” *Public Notice*, 22 FCC Rcd 9247 (2007).

Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.⁸⁰

28. **Advanced Wireless Services.** In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.⁸¹ This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.⁸² Four winning bidders that identified themselves as very small businesses won 17 licenses.⁸³ 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.

29. **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.⁸⁴ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁸⁵ 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.⁸⁶ 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.⁸⁷ A “very small business” is an entity that,

(Continued from previous page) _____

⁷⁹ *Id.*

⁸⁰ 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”).

⁸¹ See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

⁸² *Id.* at 23 FCC Rcd at 7521-22.

⁸³ 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 (2008).

⁸⁴ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, PP Docket No. 93-253, GEN Docket No. 90-314, ET Docket No. 92-100, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁸⁵ 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).

⁸⁶ *Amendment of the Commission’s Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, 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*”).

⁸⁷ *Narrowband PCS Second Report and Order*, 15 FCC Rcd at 10476, para. 40.

together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁸⁸ The SBA has approved these small business size standards.⁸⁹ A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁹⁰ Three of these claimed status as a small or very small entity and won 311 licenses.

30. **Paging (Private and Common Carrier).** In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁹¹ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁹² The SBA has approved these small business size standards.⁹³ According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.⁹⁴ Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.⁹⁵ Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

31. **220 MHz Radio Service – Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.⁹⁶ The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the Notice.

⁸⁸ *Id.*

⁸⁹ See *Alvarez Letter 1998*.

⁹⁰ See “Narrowband PCS Auction Closes,” *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

⁹¹ See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

⁹² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

⁹³ See *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085–88, paras. 98–107 (1999) (*Paging Third Report and Order*).

⁹⁴ See *Trends in Telephone Service* at Table 5.3.

⁹⁵ See *id.*

⁹⁶ See 13 C.F.R. § 121.201, NAICS code 517210.

32. **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 subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁹⁷ 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.⁹⁸ 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.⁹⁹ The SBA has approved these small business size standards.¹⁰⁰ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.¹⁰¹ 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.¹⁰²

33. **Specialized Mobile Radio.** 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.¹⁰³ 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.¹⁰⁴ The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.¹⁰⁵ 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 1996.¹⁰⁶ Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.¹⁰⁷ 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

⁹⁷ See *220 MHz Third Report and Order*, 12 FCC Rcd at 11068–70, at paras. 291–95.

⁹⁸ See *id.* at 11068–69, para. 291.

⁹⁹ See *id.* at 11068–70, paras. 291–95.

¹⁰⁰ See Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

¹⁰¹ See *Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

¹⁰² See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

¹⁰³ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹⁰⁴ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

¹⁰⁵ See *Alvarez Letter 1999*.

¹⁰⁶ “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).

¹⁰⁷ *Id.*

channels in the 800 MHz SMR band.¹⁰⁸ 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.¹⁰⁹

34. 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.¹¹⁰ 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.¹¹¹ 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.

35. 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 1,500 or fewer employees.¹¹² 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.

36. **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”)).¹¹³ 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.¹¹⁴ 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

¹⁰⁸ 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).

¹⁰⁹ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

¹¹⁰ 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).

¹¹¹ See, “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (WTB 2000).

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

¹¹³ *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 para. 7 (1995).

¹¹⁴ 47 C.F.R. § 21.961(b)(1).

authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.¹¹⁵ 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. The Commission has adopted three levels of bidding credits for BRS: (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) is eligible to 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) is eligible to 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) is eligible to receive a 35 percent discount on its winning bid.¹¹⁶ In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.¹¹⁷ Auction 86 concluded with ten bidders winning 61 licenses.¹¹⁸ Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

37. 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.¹¹⁹ 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."¹²⁰ The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.¹²¹ Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of

¹¹⁵ 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.

¹¹⁶ 47 C.F.R. § 27.1218. *See also* "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, 8296 (WTB 2009) (*Auction 86 Procedures Public Notice*).

¹¹⁷ *Auction 86 Procedures Public Notice*, 24 FCC Rcd at 8280.

¹¹⁸ "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 (WTB 2009).

¹¹⁹ 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.

¹²⁰ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹²¹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 517110 (issued Nov. 2010).

1000 employees or more.¹²² Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Notice.

38. **700 MHz Band Licenses.** The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.¹²³ The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹²⁴ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.¹²⁵ Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹²⁶ The SBA approved these small size standards.¹²⁷ The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders.¹²⁸ Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.¹²⁹ The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.¹³⁰ Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹³¹ In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.¹³²

39. In 2007, the Commission adopted the *700 MHz Second Report and Order*, which revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users.¹³³ In 2008, the Commission conducted Auction 73 which

¹²² *See id.*

¹²³ *See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52-59 Report and Order*).

¹²⁴ *See Channels 52-59 Report and Order*, 17 FCC Rcd at 1087-88 para. 172.

¹²⁵ *See id.*

¹²⁶ *See id.* at 1088 para. 173.

¹²⁷ *See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (Alvarez Letter 1999).*

¹²⁸ *See “Lower 700 MHz Band Auction Closes,” Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

¹²⁹ *Id.*

¹³⁰ *See “Lower 700 MHz Band Auction Closes,” Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

¹³¹ *See id.*

¹³² “Auction of Lower 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction No. 60, Down Payments due August 19, 2005, FCC Forms 601 and 602 due August 19, 2005, Final Payment due September 2, 2005, Ten-Day Petition to Deny Period,” *Public Notice*, 20 FCC Rcd 13424 (WTB 2005).

¹³³ *Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-* (continued....)

offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E Block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. For Auction 73, a bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, 36 winning bidders identifying themselves as very small businesses won 330 of the 1,090 licenses, and 20 winning bidders identifying themselves as a small business won 49 of the 1,090 licenses.¹³⁴ The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.¹³⁵

40. **700 MHz Guard Band Licensees.** In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹³⁶ A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.¹³⁷ 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.¹³⁸ An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.¹³⁹ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.¹⁴⁰

41. **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

(Continued from previous page)

102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 96-86, 01-309, 03-264, 06-169, PS Docket No. 06-229, Second Report and Order, 22 FCC Rcd 15289 (2007) (700 MHz Second Report and Order).

¹³⁴ See "Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period," Public Notice, 23 FCC Rcd 4572, 4572-73 (WTB 2008).

¹³⁵ *Id.*

¹³⁶ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*700 MHz Guard Band Order*).

¹³⁷ See *id.* at 5343-45 paras. 106-10.

¹³⁸ See *id.*

¹³⁹ See *700 MHz Guard Band Auction Closes*, Public Notice, 15 FCC Rcd 18026 (2000).

¹⁴⁰ See *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (2001).

Mexico.¹⁴¹ Bidding credits for designated entities were not available in Auction 77.¹⁴² In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.¹⁴³

42. **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.¹⁴⁴ 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.¹⁴⁵

43. 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.

44. **Rural Radiotelephone Service.** The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁴⁶ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).¹⁴⁷ 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.¹⁴⁸ 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.

45. **Air-Ground Radiotelephone Service.** The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.¹⁴⁹ We will use SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an

¹⁴¹ 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 (WTB 2008).

¹⁴² *Id.* at 6685.

¹⁴³ 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 (WTB 2008).

¹⁴⁴ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁴⁵ See generally 13 C.F.R. § 121.201.

¹⁴⁶ The service is defined in 47 C.F.R. § 22.99.

¹⁴⁷ BETRS is defined in 47 C.F.R. §§ 22.757 and 22.759.

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

¹⁴⁹ See 47 C.F.R. § 22.99.

entity employing no more than 1,500 persons.¹⁵⁰ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Notice.

46. **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.¹⁵¹ Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.¹⁵² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars.¹⁵³ 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.¹⁵⁴ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Notice.

47. **Fixed Microwave Services.** Fixed microwave services include common carrier,¹⁵⁵ private operational-fixed,¹⁵⁶ and broadcast auxiliary radio services.¹⁵⁷ At present, there are approximately

¹⁵⁰ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁵¹ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁵² 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.

¹⁵³ See generally *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88 paras. 64–73 (1998).

¹⁵⁴ See *id.*

¹⁵⁵ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

¹⁵⁶ 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.

¹⁵⁷ 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 (continued....)

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 Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁵⁸ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

48. **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.¹⁵⁹ 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.¹⁶⁰ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁶¹ Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.¹⁶² 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.

49. **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.¹⁶³ 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.¹⁶⁴ The SBA has approved these small business size standards.¹⁶⁵ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Notice.

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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.

¹⁵⁸ See 13 C.F.R. § 121.201, NAICS code 517210.

¹⁵⁹ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

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

¹⁶¹ *Id.*

¹⁶² 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.

¹⁶³ See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661-64, paras. 149-151 (1997).

¹⁶⁴ See *id.*

¹⁶⁵ 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).

50. **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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸ The SBA has approved these small business size standards in the context of LMDS auctions.¹⁶⁹ 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.

51. **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.¹⁷⁰ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹⁷¹ 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.¹⁷² These size standards will be used in future auctions of 218-219 MHz spectrum.

52. **2.3 GHz Wireless Communications Services.** This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.¹⁷³ The SBA has

¹⁶⁶ See *Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, Reallocate the 29.5-30.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689-90, para. 348 (1997) (“*LMDS Second Report and Order*”).

¹⁶⁷ See *LMDS Second Report and Order*, 12 FCC Rcd at 12689-90, para. 348.

¹⁶⁸ See *id.*

¹⁶⁹ See *Alvarez to Phythyon Letter 1998*.

¹⁷⁰ See *generally Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹⁷¹ See *generally Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

¹⁷² See *id.*

¹⁷³ *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879 para. 194 (1997).

approved these definitions.¹⁷⁴ The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

53. **1670-1675 MHz Band.** An auction for one license in the 1670-1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670-1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670-1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

54. **3650–3700 MHz band.** In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz).¹⁷⁵ As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

55. **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.¹⁷⁶ 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 operated that year.¹⁷⁷ 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, Teligent¹⁷⁸ and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

56. **24 GHz – Future Licensees.** With respect to new applicants in the 24 GHz band, the size standard for “small business” is an entity that, together with controlling interests and affiliates, has

¹⁷⁴ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998) (*Alvarez Letter 1998*).

¹⁷⁵ The service is defined in section 90.1301 *et seq.* of the Commission’s Rules, 47 C.F.R. § 90.1301 *et seq.*

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

¹⁷⁷ 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.

¹⁷⁸ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

average annual gross revenues for the three preceding years not in excess of \$15 million.¹⁷⁹ “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.¹⁸⁰ The SBA has approved these small business size standards.¹⁸¹ These size standards will apply to a future 24 GHz license auction, if held.

57. **Satellite Telecommunications.** Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.¹⁸² The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts.¹⁸³ Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.¹⁸⁴

58. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹⁸⁵ For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.¹⁸⁶ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.¹⁸⁷ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Notice.

59. The second category of Other Telecommunications “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-

¹⁷⁹ See *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000); see also 47 C.F.R. § 101.538(a)(2).

¹⁸⁰ See *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000); see also 47 C.F.R. § 101.538(a)(1).

¹⁸¹ 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).

¹⁸² See 13 C.F.R. § 121.201, NAICS code 517410.

¹⁸³ *Id.*

¹⁸⁴ See 13 C.F.R. § 121.201, NAICS code 517919.

¹⁸⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications”.

¹⁸⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.

¹⁸⁷ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en

supplied telecommunications connections are also included in this industry.”¹⁸⁸ For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.¹⁸⁹ Of this total, 2,346 firms had annual receipts of under \$25 million.¹⁹⁰ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

60. Cable and Other Program Distribution. 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.”¹⁹¹ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.¹⁹² According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.¹⁹³ Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more.¹⁹⁴ Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Notice.

61. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.¹⁹⁵ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹⁹⁶ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁹⁷ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹⁹⁸ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000

¹⁸⁸ U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications”, <http://www.census.gov/naics/2007/def/ND517919.HTM>.

¹⁸⁹ See 13 C.F.R. § 121.201, NAICS code 517919.

¹⁹⁰ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

¹⁹¹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

¹⁹³ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

¹⁹⁴ See *id.*

¹⁹⁵ See 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See *Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

¹⁹⁶ 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.

¹⁹⁷ See 47 C.F.R. § 76.901(c).

¹⁹⁸ 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.

or fewer subscribers.¹⁹⁹ 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.²⁰⁰ Thus, under this second size standard, most cable systems are small.

62. **Cable System Operators.** The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²⁰¹ 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.²⁰² Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²⁰³ 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,²⁰⁴ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

63. **Open Video Services.** 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.²⁰⁵ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²⁰⁶ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”²⁰⁷ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 3,188 firms in this previous category that operated for the entire year.²⁰⁸ Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had

¹⁹⁹ 47 C.F.R. § 76.901(c).

²⁰⁰ 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.

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

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

²⁰³ 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.

²⁰⁴ 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.

²⁰⁵ 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*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606 para. 135 (2009) (“*Thirteenth Annual Cable Competition Report*”).

²⁰⁶ *See* 47 U.S.C. § 573.

²⁰⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

²⁰⁸ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

employment of 1000 employees or more.²⁰⁹ Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, we note that the Commission has certified some OVS operators, with some now providing service.²¹⁰ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²¹¹ 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.

64. **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,²¹² which has an SBA small business size standard of 1,500 or fewer employees.²¹³ These are also labeled “broadband.” The latter are within the category of All Other Telecommunications,²¹⁴ which has a size standard of annual receipts of \$25 million or less.²¹⁵ These are labeled non-broadband. 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.²¹⁶ For the second category, the data show that 1,682 firms operated for the entire year.²¹⁷ 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.

65. **Internet Publishing and Broadcasting and Web Search Portals.** Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites

²⁰⁹ *See id.*

²¹⁰ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

²¹¹ *See Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 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.

²¹² U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

²¹⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

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

²¹⁶ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 5171103 (issued Nov. 2010) (employment size). The data show only two categories within the whole: the categories for 1-4 employees and for 5-9 employees.

²¹⁷ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 5179191 (issued Nov. 2010) (receipts size).

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).²¹⁸ The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees.²¹⁹ According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year.²²⁰ Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more.²²¹ Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

66. **Data Processing, Hosting, and Related Services.** Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”²²² The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts.²²³ According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.²²⁴ Of these, 6,726 had annual receipts of under \$24,999,999.²²⁵ Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

67. **All Other Information Services.** The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).”²²⁶ 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.²²⁷ According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.²²⁸ Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

²¹⁸ U.S. Census Bureau, “2007 NAICS Definitions: 519130 Internet Publishing and Broadcasting and Web Search Portals,” <http://www.naics.com/censusfiles/ND519130.HTM>.

²¹⁹ See 13 C.F.R. § 121.201, NAICS code 519130.

²²⁰ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 519130” (issued Nov. 2010).

²²¹ *Id.*

²²² U.S. Census Bureau, “2007 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”, <http://www.census.gov/naics/2007/def/NDEF518.HTM>.

²²³ See 13 C.F.R. § 121.201, NAICS code 518210.

²²⁴ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 518210” (issued Nov. 2010).

²²⁵ *Id.*

²²⁶ U.S. Census Bureau, “2007 NAICS Definitions: 519190 All Other Information Services”, <http://www.census.gov/naics/2007/def/ND519190.HTM>.

²²⁷ See 13 C.F.R. § 121.201, NAICS code 519190.

²²⁸ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 519190” (issued Nov. 2010).

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

68. In this Notice, the Commission seeks public comment on comprehensive universal service and intercarrier compensation reform. The transition to reformed universal service programs and new intercarrier compensation rules could affect all carriers, including small entities, and may include new administrative processes. In proposing these reforms, the Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rule, including data quantifying the extent of those costs or burdens.

69. In this Notice, the Commission proposes annual data collection from high-cost and, ultimately, CAF recipients. The Commission also proposes to require all such recipients to report on deployment, adoption and pricing for their voice and broadband offerings.

70. The Commission also proposes to require recipients to file an annual report of their financial condition and operations, which is audited and certified by an independent certified public accountant, and accompanied by a report of such audit. The report shall include, at a minimum, balance sheets, income statements, statements of cash flow, and notes to the financial statements, if available. The Commission further proposes that the information included in these disclosures be made available to the public to promote increased transparency and efficiency. To minimize the cost and reporting burden on carriers, the Commission proposes to allow those carriers that are required to file financial reports with the Securities and Exchange Commission or the Rural Utilities Service to satisfy this requirement by providing electronic copies of the annual reports filed with those agencies to the Commission so long as the reports meet the minimum information requirements imposed by the Commission's rules and are filed with the Commission by the deadline imposed in accordance with this requirement. The Commission also proposes that recipients must test their broadband networks for specific metrics on a periodic basis and report the results to USAC. The results would be subject to an audit.

71. The Commission further seeks comment on any additional reporting requirements that should be required of high-cost or CAF recipients. For example, should there be additional reporting requirements for providers serving Tribal lands and Native communities? The Commission also seeks comment on how to transition from the current reporting requirements to more comprehensive reporting requirements that would apply to all high-cost and CAF recipients.

72. The Commission seeks comment on ways to target support more directly to areas that are uneconomic to serve, including by targeting support through disaggregation within study areas. We propose two options for disaggregation that may require recordkeeping or reporting: either a carrier may disaggregate in accordance with a plan approved by the appropriate regulatory authority, or by self-certifying to the appropriate regulatory authority a disaggregation plan.

73. The Commission also proposes the creation of a CAF program, which includes the establishment of performance coverage requirements and possible requirements applicable to parties receiving support to demonstrate coverage and compliance with other possible metrics. The Commission proposes that all recipients of CAF funding comply with audit and record keeping requirements. The Commission proposes that parties seeking to participate in a CAF auction and receive support to meet a variety of eligibility criteria, which may involve reporting, recordkeeping or other compliance requirements. Further, as part of a CAF auction, we propose an auction process that would require the completion of a pre-auction "short-form" application by all bidders and a post-auction "long-form application" by winning bidders. Finally, in the Notice we seek comment on other potential requirements, including requirements designed to ensure guarantee of performance for winning bidders as well as certification requirements necessary to receive CAF support.

74. Further, the Commission proposes to improve internal control mechanisms to apply to the high-cost program and, ultimately, to the CAF. We seek comment on improvements that can be made the section 254(e) certification process. We also seek comment on whether high-cost universal support recipients should be subject to additional audit requirements and data validation processes. We seek comment on whether to modify or adopt additional record retention documents as well as performance coverage requirements.

75. In the Notice, the Commission seeks comment and data on issues that must be addressed to comprehensively reform intercarrier compensation. These issues include the appropriate path or transition to modernize the existing rules, the ultimate end point for intercarrier compensation reform, if and how carriers should be allowed to recover costs or revenues that might be reduced by any intercarrier compensation reforms, and data to analyze the effects of proposed reforms and need for revenue recovery.

76. Compliance with a transition to a new intercarrier compensation system may impact some small entities and may include new or reduced administrative processes. For carriers that may be affected, obligations may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive recovery from other sources as intercarrier compensation rates are reduced. Additionally, these carriers may need to modify some administrative processes relating to the billing and collection of intercarrier compensation in order to comply with any new or revised rules the Commission adopts as a result of the Notice.

77. Proposed modifications to the rules to address arbitrage opportunities also will affect certain carriers, potentially including small entities. To the extent that the Commission addresses the intercarrier compensation framework applicable to interconnected VoIP, providers might be required to modify or adopt administrative, recordkeeping, or other processes to implement that framework. Moreover, the Notice considers possible rule modifications to require that call signaling information is passed completely and accurately to terminating service providers, which may require service providers to modify some administrative processes. Further, possible rule modifications to address access stimulation, if adopted, may affect certain carriers. For example, carriers that meet the revenue sharing trigger or other thresholds proposed in the Notice may be subject to revised tariff filing or other requirements.

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

78. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²²⁹

79. The Notice seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the Notice.

80. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching its final conclusions and taking action in this proceeding.

²²⁹ 5 U.S.C. § 603(c)(1)–(c)(4).

81. In the Notice, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Specifically, the Commission seeks comment on whether certain public interest obligations should be different for small entities.²³⁰ The Commission also seeks comment on whether there should be an exception to the proposed phase out of support for competitive ETCs, which could be based, in whole or in part, on the size of the provider.²³¹ And the Commission seeks comment on whether to provide different transition periods or different reform path for particular classes of carriers.²³²

82. The Commission also seeks comment on the appropriate sequence and timing of intercarrier rate reductions and alternative intercarrier compensation methodologies that might be adopted as an end-point for reform, including bill-and-keep, flat-rated intercarrier charges, or other proposals.²³³ The Commission seeks comment on the impact to small entities of reduced intercarrier rates under intercarrier compensation reform transition options, including whether a different transition period might be appropriate for particular classes of carriers.²³⁴

83. The Notice also seeks comment on the appropriate standard for recovery and on whether reductions in intercarrier compensation rates would impact all carriers in a similar manner.²³⁵ The Commission asks if the recovery approach adopted should be different depending on the type of carrier or regulation.²³⁶ The Commission also invites comment on specific recovery considerations for rate-of-return carriers and whether any cost or revenue recovery mechanism could provide rate-of-return carriers with greater incentives for efficient operation.²³⁷

84. Finally, the Commission seeks comment on whether separate consideration for small entities is necessary or appropriate for each of the following issues discussed in the Notice: the potential impact of rules governing interconnected VoIP traffic;²³⁸ the potential impact of rules related to call signaling;²³⁹ the potential impact of rules relating to access stimulation, including revised tariff-filing requirements;²⁴⁰ the potential impact of rules relating to interconnection and related issues.²⁴¹

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

85. None.

²³⁰ See *supra* section V.D.

²³¹ See *supra* section VI.D.

²³² See *supra* section VI.G.

²³³ See *supra* section XII.B..

²³⁴ See *supra* section XIII

²³⁵ See *supra* section XIV.

²³⁶ See *id.*

²³⁷ See *supra* section XIV.E.

²³⁸ See *supra* section XV.A.

²³⁹ See *supra* section XV.B.

²⁴⁰ See *supra* section XV.C.

²⁴¹ See *supra* section XVI.

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109*

“The Universal Service Fund is broken.” You don’t have to take my word for it. Those are the words of the bipartisan team of Lee Terry, Vice Chair of the House subcommittee that oversees communications, and Rick Boucher, then the Chairman of the subcommittee. The Intercarrier Compensation system is broken too. Neither program is up to the nation’s broadband challenge, and both are plagued with waste and inefficiency. So today I’m happy to join all my colleagues in putting forward a comprehensive plan with the twin goals of modernizing and streamlining these programs – of getting broadband infrastructure to rural America, promoting private investment and innovation, and cutting costs and constraining the fund’s growth. In doing so, we take a major step forward in implementing the National Broadband Plan.

Building on other recommendations of the Plan, we have already made important strides in the last year to reform aspects of USF: We’ve modernized our E-rate program so schools and libraries can get faster Internet connections and access 21st century learning tools. We’re updating our rural health care program so patients at rural clinics can benefit from broadband-enabled care like remote consultations with specialists anywhere in the country. These changes are helping deliver on the National Broadband Plan’s goal of ultra-high-speed broadband to anchor institutions in every community in the country. We’ve also proposed a Mobility Fund to spur the build out of advanced mobile wireless in areas not served by current-generation networks. On Lifeline/LinkUp, an important program for low-income Americans, we’ll be proposing reforms next month.

Today, we take on the largest part of the USF program – the part focused on supporting service for consumers in rural America – along with the intertwined Intercarrier Compensation system.

Universal service has been at the core of the FCC’s mission since the Communications Act of 1934 created the agency with the commitment to make vital communications services accessible to all Americans. Fifteen years ago today, our country recommitted to that goal with the Telecommunications Act of 1996.

Together, USF and ICC helped connect virtually every American to our 20th century communications grid, first bringing basic telephone service to places where there was no economic case for service, and then extending the benefits of mobile phone service to more and more areas across the country. But the communications landscape has fundamentally changed since then. The most recent statistics show that more than 25% of adults now live in households with only wireless phones, and voice-over-IP lines are growing rapidly as traditional phone lines decline. Broadband – high-speed Internet – now serves the role that telephone service once did. It is the indispensable infrastructure of the 21st century. Broadband has become vital for our economic future and global competitiveness, and it is a key building block for achieving common goals on education, health care, energy, and public safety.

Yet multiple studies show the U.S. lagging other countries on key broadband metrics. Roughly one-third of Americans aren’t online – that figure is under 10% in Singapore. And too many parts of the country aren’t connected at all. Up to 24 million Americans couldn’t get broadband today even if they wanted it. The infrastructure simply isn’t there.

We won't fully realize the promise of broadband and the fundamental American promise of opportunity for all if large swaths of our country are left out. Americans without broadband know this all too well: Americans like the 17-year-old girl in Alachua County, Florida who's doing her homework in the parking lot of the local library at night because her family can't get broadband at home. Or the firemen in Northern California, who missed out on a grant for public safety equipment because their dial-up connection kept kicking them off the application website.

A couple of months ago, I was in West Virginia with Chairman Rockefeller, who has long been a champion of serving the unserved. During our visit I spoke with people who can't get high-speed Internet or mobile coverage at their home or business, even though communities right next door are connected. How frustrating is that? This rural-rural digital divide is a problem in virtually every state and territory.

At the same time, USF and ICC have become riddled with inefficient, outdated rules and perverse incentives. For example, according to one study, approximately one hundred million dollars flow to phone companies each year to serve areas where competing providers, without a dollar of government support, offer voice service to all households. In many places, USF funds four or more phone companies to serve the same area. And it leaves hundreds of companies to control their own funding spigot, with guaranteed double-digit returns. Does that make sense?

On the ICC side, it can cost 10 times more to call a friend a few towns over than to call someone on the other side of the world. Because of the incentives our rules create, we have "traffic pumping" and "phantom traffic." And carriers are tangled in costly litigation about the treatment of VoIP traffic for purposes of ICC, creating real uncertainty.

Looking at these problems, some say we should eliminate the Universal Service Fund altogether. I disagree. While the world has changed, the importance of universal service has not. We simply shouldn't let millions of Americans be bypassed by the broadband revolution. Instead, we must streamline and modernize the program.

Some say the Universal Service Fund doesn't need major change, that the status quo is largely fine. I disagree with that too. The program is not getting the job done, and tinkering won't be enough. It's leaving millions on the outside looking in, wasting taxpayer dollars every year, and growing without constraint. That's unacceptable. We need to be responsible fiscal stewards, to get the most bang for our USF buck. Particularly in light of its inefficiencies, we need to control the costs of USF.

The reform proposal we are putting forward rests on four pillars:

- Modernizing USF and ICC to support broadband networks;
- Ensuring fiscal responsibility by controlling costs and constraining the size of the Fund;
- Demanding accountability from both USF recipients and the government itself;
- Enacting market-driven and incentive-based policies to maximize the impact of scarce program resources and the benefits to all consumers.

It also calls for a sensible but certain transition – one that gives participating companies sufficient runway to adapt, with no overnight flash cuts, but with clear milestones and a firm path forward.

In the first stage of this transition, we propose cutting waste and inefficiency from the current program, and shifting funding, as it becomes available, to the Connect America Fund. So we'll fund broadband for unserved areas out of savings from existing programs. Throughout the transition, we will ensure that all Americans keep robust, reliable voice service and can make calls from their homes.

Like any big transition, this one won't be easy, and it will take time. But we stand ready to work with Congress and all parties on ideas for accelerating the transition, so we can provide broadband to more unserved areas faster.

I'm very pleased to be joined by all four of my colleagues in adopting today's proposals. This NPRM builds on a history of bipartisan commitment to reform on this issue. When we released the Broadband Plan last year, we unanimously affirmed the need for USF and ICC reform, and today we take the next step to deliver on that joint commitment, with complete agreement on the need to move forward quickly. Fixing these programs is not a partisan issue. It's simply the right thing to do.

Now let me turn to what's next: We plan to move expeditiously. At the same time, as with all our efforts, we will run a fact-based, data-driven, open, and participatory process. In recognition of the federal-state partnership that undergirds USF and ICC, we are providing a special opportunity for comment for the state members of the Joint Board. And in the coming weeks, there will be ample opportunity for input from all, including through public workshops on key issues.

I call on all stakeholders to engage with us in this process, and I look forward to all input and ideas, especially on the hard issues, consistent with the pillars for reform I outlined earlier.

To those who say the Connect America Fund should fund the highest possible speeds and all bells and whistles: Bring us your specific proposals – but you must show us how much it would cost and who would pay for it, consistent with our commitment to fiscal responsibility and accountability.

To providers concerned the Connect America Fund won't help them build out wired or wireless broadband networks, but will support only their competitors or providers in other areas: Work with us to maximize the number and types of providers that can compete for support. A technology-neutral approach is key to putting scarce resources to the best possible use.

To those who receive ICC: Help us develop sensible transition paths that maximize predictability while minimizing disruption.

To those who pay ICC: Work with us to ensure that reforms ultimately benefit consumers, which will be the true measure of the success of our efforts.

I understand that change is not easy, but we all agree: Ignoring the problems with USF and ICC is no longer an option. This is not a question of *if* we should reform the system, but *how* we reform it.

If we care about the U.S. having world-class 21st century infrastructure, if we care about U.S. leadership in innovation and our global competitiveness, if we care about fiscal responsibility and market-based solutions to public policy challenges, we have to move forward with USF and ICC reform as we propose to do today.

Let me conclude by thanking the remarkable staff that worked on this item—those sitting at the table today and all the many others who have worked so hard over the past months and especially the past few weeks. What they say about the post office has been true here at the FCC: the team really did work through snow and rain and dark of night to get this done. They edited and crunched numbers around the clock straight through Martin Luther King weekend to prepare the item for circulation, and have worked tirelessly in the weeks since to incorporate input from my fellow Commissioners, helping refine and improve it.

I also want to extend my thanks to the National Broadband Plan team, whose excellent and groundbreaking work laid the foundation for the proposals we are voting on today. Thank you all.

Finally, thank you to my colleagues and their staffs for working together on this important item.

I am proud to cast my vote for this item to modernize and streamline USF and ICC.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109

This is our best chance yet to get from here to there with a Universal Service system that will truly serve the telecommunications needs of Twenty-first century consumers. It's very likely our last chance for a while, too, because if we can't bring this home now, with all the preparation and effort and expectation that has gone into it, we'll be left with a rickety, tottering, last-century system that did good things for plain old telephone service but hasn't got a shot at taking us where we need to go in the years ahead. By now we should all understand the importance of this. The President, the Congress and the Commission are clearly looking to broadband infrastructure as one of the great tools to build a better and more prosperous future for America. We undertake this task with nothing less than the prosperity of our local communities, our global competitiveness, and the infrastructure for our national civic dialogue all at stake. Whether the United States will continue to give rise to the ideas, inventions, and innovations that drive the global economy will in no small part depend upon the strength of our communications networks and on the ability of all Americans—urban and rural—to access them. Universal Service is the bedrock of our national communications policy—and of this Commission's enabling statute—because all of us benefit when more of us are connected.

Let's keep in mind that, for all its faults, the present system has accomplished a lot. Good things have come from the high-cost support mechanism. National telephone penetration stands at 96%—although we know, and I'm pleased that this item acknowledges, that some areas such as Indian Country remain inexcusably behind. Communications infrastructure has been deployed in many rural, insular and high cost areas—those places where there may never be a private sector business case for broadband and high-quality voice service. Good jobs have been created. And here's something that gets too seldom mentioned: because of our Universal Service mechanisms we have less industry consolidation than we would otherwise have in an already overly-consolidated sector.

But new times, new challenges and new technologies are passing the old system by. It just hasn't had the maintenance and modernization any system needs to keep functioning. Plus the action has moved to far more advanced telecommunications. So the chorus for reform has, rightly, grown loud. Yet much work remains before we are all singing off the same song sheet. Writing that song sheet is what we will be doing in the months immediately ahead. The current regime of Universal Service and Intercarrier Compensation has many moving parts and categories that can be mind-boggling in their intricacies, applications and exemptions. We must be upfront that phasing down and eliminating the inefficiencies that we all know exist in legacy mechanisms will not be easy or painless. We must face the hard truth that our current system is not designed to live up to either the public interest or the dictate of the law for today's needs—ensuring access to the services all Americans require to participate fully in the digital age. We see some money, frankly, being wasted right in sight of the need for funds in unserved areas.

The item before us commits to a stable and predictable framework for Intercarrier Compensation as we rationalize a system too often plagued with gamesmanship. We all see the symptoms of decision-making deferred: too much litigation, self-help, and market power as a substitute for the honest rules needed to minimize arbitrage, promote investment and deployment, and maximize the opportunity for new technology to flourish. The Commission must address these issues head-on – the treatment of VOIP, phantom traffic and access stimulation, to name the most obvious.

Because many providers' current business models—and ultimately the consumers they serve—rely on today's outdated system, our Commission must move quickly from the proposals teed up in today's item to a real roadmap. Industry and consumers will benefit from the certainty of mile-markers guiding us on the road to reform. We won't complete the transition right away, but we have an obligation to complete the transition plan this year.

This is why I have been talking about—and I appreciate working with my colleagues on this—a series of workshops between the FCC and all stakeholders—and no one is more a stakeholder than the public who will be living with its results. My hope is participants would come prepared to put on the table their final, best and considered thoughts on the shape of our decisions, cognizant that Commission decisions and votes were imminent and that everyone will have to sacrifice a little so the country can gain a lot. These workshops would take place as soon as possible after all stakeholders have had an opportunity to submit written comments on today's item, so that we can have open and transparent discussions on the eve of Commission votes, which I am hoping and expecting will take place this year—2011. That means a final transition plan and necessary formative Orders.

To truly reshape our Universal Service and Intercarrier Compensation policies to meet our national broadband goals *will* require a commitment to shared sacrifice and an ability to rise above the clamor for whatever piece of the status quo has been beneficial to any one private interest. I have served at the Commission through many iterations and attempts at reform. While we have resolved some discrete issues and made some adjustments, comprehensive reform is what is required to make it across the finish line, and that's going to demand more from each and every one of us.

Today's item certainly does not lack for questions, and if there are more that stakeholders think of, I hope they will tee them up and respond with their thoughts in this record. Our inquiry also needs to expand beyond the important considerations about how to distribute efficient and targeted support for broadband to include how to assess the contributions necessary to put the Universal Service Fund on solid footing for the future. Recognizing that consumers ultimately bear the burden, equity would suggest that a fund that distributes support for broadband ought to require those same services to contribute. The \$4.3 billion in annual high cost funding is obviously key to our broadband build-out, but it's unlikely to be the total bill for bringing truly high-speed telecommunications to every citizen and every corner of the land in sufficient time to keep America fully productive and globally competitive. Extending world-class communications infrastructure across the length and breadth of the country isn't something that can be done on the cheap. Universal Service will be a large part of the solution; it may not be the whole solution.

I also look forward to further, final action to implement the Mobility Fund. We have started down the road on this already, realizing that setting up and running the reverse auctions proposed in that item will provide an important test drive for the proposals—both interim and long-term—that we contemplate here for the Connect America Fund. Modernizing our low income support mechanisms to support broadband must also be a top priority. The Federal-State Joint Board has already issued recommendations and identified key issues in the Lifeline and Linkup programs – and I anticipate action soon on that agenda. And we have made impressive progress toward making sure E-Rate is able to fulfill its maximum potential going forward. A stellar performer in the past, E-Rate will deliver equally amazing results in the years ahead.

Finally, it is imperative that we work closely with our state colleagues as partners in this transition. You have heard me speak many times about this so I won't belabor it here, but I believe the Telecommunications Act of 1996 envisioned a level of federal-state cooperation in implementing the statute that has not yet been achieved. Maybe we can achieve it here; I hope so.

So I look forward to a fast pace as we set out to win this race together. I want to thank the several Bureaus who have been working so hard for so long on preparing this item. My thanks to the Chairman for putting it front-and-center with a commitment to action soon. Thanks to our Eighth Floor staffs for their many contributions to the proceeding and, of course, to all of my esteemed colleagues who share a commendable desire to get on with this job and actually finish it. Today, as I vote to approve this Notice of Proposed Rulemaking, I do so with more confidence than ever in my nearly ten years here that this is a job that can finally get done.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109

Thank you Mr. Chairman. Fifteen years ago today, President Clinton signed into law the landmark Telecommunications Act of 1996. It took almost twelve years for Congress to pass that legislation, but when it did, it garnered overwhelming bipartisan support, passing 91 to 5 in the Senate, and 414 to 16 in the House. A key component of that legislation is section 254 which outlines broad powers and duties for the FCC to structure the universal service subsidy program. The Act also defined our authority to modernize our complex intercarrier compensation rules.

The universal service fund's original mission was to make traditional analog, circuit-switched, voice service available and affordable to as many Americans as possible. Congress also called upon the Commission, however, to ensure that we refine the program from time to time to ensure affordable access to "advanced services." In the fall of 2008, four commissioners, two Democrats and two Republicans (myself included), agreed in principle on many fundamental reforms of the universal service and intercarrier compensation regimes. Unfortunately, four votes were not sufficient to carry the day. Nonetheless, I remain optimistic that the five of us can rekindle that positive and constructive spirit as we take the first steps on the next segment of this long journey.

As I have said since I first arrived here at the Commission, the universal service fund's growth, from \$4.9 billion in 2000 to over \$8 billion, is troubling. Equally problematic has been the unbridled growth of the contribution factor. In its early stages in 1998, this "tax" to support the fund, which is derived ultimately from consumers, stood at 5.53 percent of interstate revenues. Today, that "tax rate" skyrocketed to an all time high of more than fifteen percent last year. As with many government programs in general, the trends on both the spending and the taxing sides of this equation are simply unsustainable. As a 21st century program, the universal service fund should evolve away from subsidizing inefficient 20th century systems and support the efficiencies of current technologies as brought about by competitive pressures.

As I have stated many times, my first priority has always been to restore fiscal responsibility to this program. Accordingly, I have long advocated for *comprehensive* reform of the entire universal service and intercarrier compensation regimes. It's like fixing a watch; it is impossible to tinker with one component of the mechanism without affecting all of its parts at the same time. Today, the Commission is choosing to take the piecemeal route again by not addressing the contribution mechanism at the same time. While not ideal, in my view, piecemeal reform is better than no reform at all. As such, I commend the Chairman for taking on this complex but important effort. I also thank him for his willingness to work with all of his colleagues to achieve consensus.

As we go forward, I will work to ensure that we contain the growth of the fund, or preferably, *reduce* the size of the fund. And, when I refer to the size of the fund, I mean the *entire* universal service fund, not just the high cost program which we address in this proposed rulemaking. It would not be fiscally responsible if the FCC found savings in one universal service program, such as the high cost fund, but then expanded other universal service programs. In the same vein, as technology offers consumers more efficiencies resulting in reduced costs, I challenge my colleagues to work toward actually *reducing* the size of the fund over time to reflect the savings brought about by competition and innovation.

Ultimately, competition supplants any ostensible need for regulation and subsidies. In that spirit, I am delighted that we are seeking comment on ways to transition to market-driven policies such as exploring reverse auctions.

Of course, to undertake serious universal service reform, the Commission must have the legal authority to do so. As such, I am pleased that this notice asks for comment on our statutory authority to support broadband with universal service funds. My opinion is that the Commission *does* have such authority through section 254. In section 254(b), Congress specified that “[t]he Joint Board and the Commission *shall* base policies for the preservation and advancement of universal service on [certain] principles.” Two of those principles are particularly instructive: First, under section 254(b)(2), Congress sets forth the principle that “[a]ccess to advanced telecommunications and *information services* should be provided in all regions of the Nation.” Second, with section 254(b)(3), Congress established the principle that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and *information services* . . .” If other language appears to be ambiguous, it is ambiguous in a classic *Chevron*¹ deference sense and the Commission’s reasonable interpretation of it would be upheld by the courts.²

I am concerned, however, that some lobbying groups are pushing for us to impose Internet network management conditions on recipients of universal service funds. Such policies are unnecessary and would be counterproductive.

In sum, all stakeholders, especially American consumers, should be on notice that the five of us are determined to go forward with honest reform as soon as possible. While today marks the beginning of the latest installment of the universal service and intercarrier compensation reform saga, we will do all that we can to write the last chapter with great haste and care. I look forward to working with my colleagues, Members of Congress and all stakeholders on these issues. Consensus can and should be found this time.

Finally, many thanks to the legions of dedicated professionals in both the Wireline and Wireless Bureaus for your seemingly endless hours of hard work on this notice. You’ve done an outstanding job.

¹ *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984); see also *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (relying on *Chevron* deference in affirming FCC authority to implement universal service provisions set forth in the Telecommunications Act of 1996).

² Some contend that the definition of universal service under section 254(c)(1) muddies the water because it does not include “information service.” Instead, that provision states that “[u]niversal service is an evolving level of *telecommunications services* . . . taking into account advances in telecommunications and information technologies and services.” But, it is also relevant that the term “telecommunications service” is qualified by the adjective “evolving.” Even if section 254 were viewed as ambiguous, pursuant to the well established principle of *Chevron* deference, the courts would likely uphold the FCC’s interpretation as a reasonable and permissible one.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109*

In order to fully participate and succeed in our 21st Century economy, all citizens—no matter where they live—must have access to broadband technology. Most of us in this room take for granted the presence of high-speed Internet access in our homes. But in many regions of our nation, there are consumers who are not so fortunate.

I still hear stories of the persistent digital divide in our country, and the significant disadvantages citizens face without broadband service. For example, just last week, I learned of two more stories that highlight the need for universal service reform. In the small Texas town of Von Ormy, a young woman who had been out of work for three months, missed a job opportunity because her town has no reliable high-speed Internet service, or even dependable wireless phone reception. Only by traveling 17 miles away to the closest metropolitan area of San Antonio and staying with friends, was she able to receive communications about a job for which she applied, and to complete the employer's applications requirements by accessing the Internet at a library. Still another situation involved a high school student who was forced to spend a night in his local library to complete a writing assignment due the next day and his home had no reliable high-speed Internet service. These are real stories and real people who do not question the power of broadband, but right now, they are unable to access it at home. As such, I fully agree with my fellow Commissioners that the Universal Service Fund must be reformed to bring the benefits of broadband to the millions of Americans who lack access to a high-speed network where they live.

The step we take today in adopting this Notice of Proposed Rulemaking, builds upon the work we began immediately after the release of the National Broadband Plan. Reforming the Universal Service Fund in order to provide a meaningful opportunity for every American to benefit from the broadband communications era, is an action consistent with the principles Congress set forth in Section 254 of the Communications Act to ensure that *all* Americans have access to affordable voice and advanced communications services. While the Universal Service Fund has been instrumental in providing affordable telephone service to millions of Americans, it has not been as effective in ensuring that advanced services reach all American homes. Indeed, it is apparent that the current structure of the high-cost mechanisms of the Fund has led to the support of multiple providers and networks, rather than focusing on the mission Congress gave us to ensure quality voice and advanced services at just, reasonable, and affordable rates in rural, insular, and high cost areas. Moreover, it also is apparent that we cannot be certain that our financial support of communications networks is being used prudently by providers to achieve these goals. Accordingly, it is imperative that we move expeditiously to reform the high-cost mechanisms to address the broadband needs of our country and ensure that support is used efficiently for making both voice and broadband services available and affordable in all areas of our nation.

As a Commissioner from a rural state, I know how important it is that citizens have access to the same critical communications services—both wireline and wireless—in rural areas as they do in urban areas, and that such services are comparable and affordable. Without modern communications services, the economic survivability of rural areas is in jeopardy. Large and small businesses must have access to broadband to compete in our global economy, and rural areas especially, must have broadband in order to

keep and attract employers who can help sustain and grow their economies.

I have listened closely to numerous stakeholders and understand that many companies, their employees and families, are currently relying upon USF support to provide services in their local communities. I recognize the need for a careful balance, and of providing adequate time for entities to adjust to any proposed transition, while we effectuate the necessary changes required to ensure that we realize as many benefits from the Universal Service Fund. Service providers and investors must and will have time to adjust, so that all providers can make the migration successfully. We must ensure that areas currently served by wireline or wireless providers, that would not be served but for Universal Service Fund support, continue to receive their service. At the same time, however, we must ask each company's help in identifying and eliminating inefficiencies so that the Fund can benefit more consumers.

As communications technologies evolve, so too must the entire framework that ensures that our nation is fully connected. As such, it is not sufficient to solely focus on the Universal Service Fund. We must also consider the necessary changes to the intercarrier compensation regime. The communications marketplace has changed dramatically and intercarrier compensation revenues have decreased significantly. The implicit subsidies that have been used to support networks have eroded, and we have every reason to believe that they will continue to do so as more communications move to broadband networks. Such uncertainty and instability should be addressed simultaneously with USF reform. I am sympathetic to industry's concerns that there are immediate issues in the ICC regime that should be addressed, and I want to work with my fellow Commissioners on these issues in a timely fashion. I also want to encourage industry to work with us on developing both immediate and long-term solutions, rather than start new disputes about intercarrier compensation based on the Notice's proposals. Such disputes detract from the industry's ability to engage in a productive dialogue and for us to achieve consensus on these difficult issues.

As a Commission, we should be open to new ideas and experiment with new approaches in response to changes in technology and the marketplace, but we must remain mindful of our duty to achieve the fundamental goals of universal service and not harm the success we have already achieved. As such, we must carefully consider whether new approaches to providing support require certain conditions that may not be achievable in those geographic areas where few have ventured to serve without financial assistance from the Fund and the ICC regime. It is my hope that we carefully test the effectiveness of new disbursement mechanisms before applying them to address the needs of all high-cost areas. In fact, from my travels across the country, including to some of the hardest-to-serve areas in our nation, a one-size-fits-all approach will not achieve the goals of universal service. The comprehensive nature of this Notice, along with the number of detailed questions and alternative proposals, underscores the complexity of reform for a nation that is so vast and geographically diverse. The Notice will afford all interested parties the chance to demonstrate which proposals will offer the most immediate benefits of both voice and broadband services to as many Americans as possible.

I believe that input from all stakeholders—providers, legislators, state regulators, RUS, and consumers—are critical as we consider the proposals for reform. Given the historical partnership this Commission has had with the states in providing universal service, as recognized in Section 254 of the Act, I am pleased that we are seeking specific input from our State Members of the Federal-State Joint Board on Universal Service with respect to the proposals in the Notice. Further, I am pleased that throughout the Notice we ask specific questions concerning the states' roles in the possible reform options. We must proceed in a thoughtful way to make sure that we are preserving the current availability of voice and broadband service to consumers, while expanding the availability of broadband service to unserved areas. I believe that having state input will assist us in that endeavor, and I encourage state commissions and consumer advocates to provide their counsel in this proceeding.

The task before us is not easy. If it were, it would have been done long ago. It is my hope, however, that this Commission and industry will help find a solution so that we can do what is required to reform the Universal Service Fund and the intercarrier compensation regime and make available both voice and affordable broadband services to all American homes. Next week, my state colleagues on the Joint Board will be in this room conducting a workshop on these issues and presenting some of their own ideas for reform. The next step in our work is to listen to our state colleagues, industry, consumers, and other interested parties. I want to thank my good friend and fellow Commissioner Michael Copps for his suggestion that we engage in consensus building and a productive dialogue with industry by conducting open and transparent workshops to be led by our staff.

To our Wireline Competition Bureau and Wireless Telecommunications Bureau staffs, I thank you for the tremendous efforts you already have made in this proceeding. I know you have made many personal sacrifices to help us achieve a very thorough NPRM. The time you have spent to review our record and listen to the numerous interested parties in this proceeding, in addition to your crafting the Notice, is very much appreciated. In many ways, however, your work is only beginning. I have instructed my staff to work diligently on these matters with you and the other 8th floor advisors so that we can advance our goals as quickly as possible. If there is one refrain I have heard repeatedly in my meetings with industry, it is to please provide the certainty they need to continue to invest in the networks and services they offer. It is my desire that we do just that.

**STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER**

Re: *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109

It is far from newsworthy that our universal service and intercarrier compensation regimes are unsustainable as currently structured and overdue for a significant overhaul. The Commission has struggled for the past decade with how to reform these regimes and shift their focus to tomorrow's networks and challenges. It is also self-evident how critical these regimes have been for carriers—small, mid-sized, and large—to deliver telephone service nationwide, as well as deploy much of today's broadband infrastructure. I support the *Notice's* comprehensive approach to reform universal service and intercarrier compensation.

In this proceeding, we must resolve the intractable issues that have frustrated prior Commission reform efforts and put these programs on a path to long-term sustainability with a clear focus on a new national challenge, universal broadband availability. Newly configured and purpose-built programs will be necessary so that all Americans, particularly those in rural America, have a clear path for a bright broadband future.

Many providers are justifiably concerned about how reform could affect their network investments, service to customers, and even their financial viability. We need to move quickly to provide clarity to all providers as to future shape of these regimes, and to take full advantage of this limited window of opportunity for real reform. We have to acknowledge that the uncertainty surrounding the future of existing revenue streams has consequences on consumers today, inhibiting the ability of providers to justify network investment, slowing broadband deployment. In moving ahead with reform, we must embrace an IP-based broadband future without depriving providers overnight of existing revenues critical to private investment in our broadband infrastructure. I support the *Notice's* focus on this long-term objective with clear recognition of the need to avoid flash cuts in existing support.

I also support the sensible approach in the *Notice* to design new funding mechanisms for broadband. We should resist the urge to simply layer broadband funding on to the top of today's fractured system or to start offering duplicative broadband support in addition to existing voice-based support. We need a fresh approach that drives our telecommunications infrastructure from voice to broadband and from circuit-switched to IP. It is more fiscally responsible and prudent to craft broadband-specific programs that can better ensure accountability, efficiency, and adequate funding in areas where market forces are not sufficient to drive broadband services to America's consumers.

I also appreciate the *Notice's* overall focus on the need for cost-containment. The total universal service fund has grown from \$2.3 billion in 1998 to nearly \$9 billion today. The high-cost fund alone has increased from \$1.7 billion in 1998 to \$4.4 billion today. Consumers pay for this. The universal service contribution factor this quarter is at an all-time high of 15.5 percent. This is real money from real people. It is our obligation to ensure that money is spent wisely to achieve the goals set out by Congress. Taking affirmative steps to stop runaway growth in all parts of the universal service program is crucial, but it is not—standing-alone—sufficient reform. Simply shifting the billions spent on voice subsidies to broadband subsidies would forfeit a unique opportunity to ensure that funding is properly targeted and directed at only those communities that require ongoing support, and that the billions collected from

consumers is expended in a fiscally responsible manner.

There are significant and difficult decisions ahead, and it will be important for all of us to work together to redefine universal service and intercarrier compensation for the broadband age.