Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

ORDER

Adopted: December 30, 2010 **Released: December 30, 2010**

By the Commission: Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. In this Order, we amend our rules to reclaim high-cost universal service support surrendered by a competitive eligible telecommunications carrier (ETC)[1] when it relinquishes ETC status in a particular state.

II. BACKGROUND

2. In the May 2008 *Interim Cap Order*, the Commission adopted a cap on high-cost universal service support for competitive eligible telecommunications carriers. Such support had been growing rapidly over the preceding years, increasing the universal service contribution burden on consumers.[2] To rein in this growth, the Commission capped total annual competitive ETC support for each state at the level of support that competitive ETCs in the state were eligible to receive during March 2008, on an annualized basis.[3]

3. Under the interim cap, the Universal Service Administrative Company (USAC)[4] continues to calculate support for competitive ETCs using the Commission's existing identical support rule, which enables a competitive ETC to receive the same per-line support amount received by the incumbent carrier in its service area.[5] If, however, the total support calculated for competitive ETCs in a

[1] *See* Request for Review By Corr Wireless Communications, LLC of Decision of Universal Service Administrator, CC Docket No. 96-45, WC Docket No. 05-337 (filed Mar. 11, 2009) (Corr Wireless Request for Review). To be eligible to receive high-cost universal service support, a carrier must be designated an "eligible telecommunications carrier" (ETC) for a specific service territory by the relevant state regulator or the Commission. Wireless carriers are known as "competitive ETCs," while incumbent local exchange carriers are known as "ETCs."

[2] *High -Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8837-50, paras. 6-39 (2008) (*Interim Cap Order*).

[3] *Id.* at 8846, para. 26.

[4] USAC, a subsidiary of the National Exchange Carrier Association, is the private not-for-profit corporation created to serve as the Administrator of the universal service fund. USAC collects contributions to the universal service fund and distributes universal service support in accordance with the Commission's rules and under the Commission's oversight.

[5] *Interim Cap Order*, 23 FCC Rcd at 8846, paras. 27-28; *see also* 47 C.F.R. §§ 54.307 (portability of support to competitive ETCs), 54.807 (calculation of Interstate Access Support for competitive ETCs), 54.901(b) (calculation of Interstate Common Line Support for competitive ETCs).

state exceeds the interim cap amount for that state, USAC proportionally reduces the support for each competitive ETC serving the state.[6] In the event that additional competitive ETCs are designated in a state, the *Interim Cap Order* provides that their support also counts toward the interim cap amount for that state, and the cap amount will not be increased to reflect the new competitive ETCs' high-cost support demands.[7] The cap amount also does not decrease if the number of competitive ETCs serving the state decreases.

4. In a September 2010 NPRM, the Commission sought comment on a proposal to modify its rules to reclaim legacy support surrendered by a competitive ETC when it relinquishes ETC status in a particular state, and permanently to amend its rules to facilitate efficient use of reclaimed excess high-cost support.[8] Specifically, the Commission sought comment on amending the interim cap rule so that a state's interim cap amount would be reduced by the amount of support that a competitive ETC relinquishing its ETC status was eligible to receive in its final month of eligibility, annualized.[9]

III. DISCUSSION

5. We adopt the proposal to amend the interim cap rule so that a state's interim cap amount will be adjusted if a competitive ETC serving the state relinquishes its ETC status.[10] As discussed in the *September 2010 NPRM*, the goal of the *Interim Cap Order* is to rein in high-cost universal service disbursements for potentially duplicative voice services. We find that the proposal is consistent with that goal.[11] It would reduce the overall cap on competitive ETC support in a state when a competitive ETC

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[6] *Interim Cap Order*, 23 FCC Rcd at 8846, paras. 27-28.

[7] *Id.* at 8846, 8850, paras. 26, 39.

[8] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC.* WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155, paras. 23-25 (rel. September 3, 2010) (*September 2010 NPRM*). The Commission also waived, for 18 months, section 54.709(b) of the Commission's rules to enable it to direct USAC to reserve reclaimed funds as the Commission moves forward with broadband universal service reform, and also sought comment on amending the rule on a permanent basis. Section 54.709(b) requires that USAC account for any difference between its projected revenue requirements and its actual revenue requirements as a prior period adjustment in the next quarterly demand filing. 47 C.F.R. § 54.709(b). The precise terms of the rule require that USAC carry forward any "excess payments" from contributors to the next quarter. The "next quarter" refers to USAC's next quarterly demand filing. The effect of this rule is to reduce the contribution factor in the subsequent quarter.

[9] *Id.* at para. 23. The Commission also sought comment on whether it should amend section 54.709(b) to permit the Commission to provide USAC alternate instructions for implementing prior period adjustments.

[10] For purposes of this Order, the state's interim cap amount will be adjusted if the competitive ETC is no longer eligible to receive universal service support for whatever reason, whether it is a voluntary relinquishment, or state or Commission action to revoke or rescind ETC status.

[11] Many commenters agreed with the Commission's proposal. US Telecom and the Ohio PUC agreed with the Commission that, as a policy matter, redistribution under the legacy high-cost support mechanism to other competitive ETCs providing the same service in that state, including increasing payments that support duplicative legacy voice services, would be unwise. US Telecom Association Comments at 3; Ohio PUC Comments at 4-5. Verizon, NCTA and AT&T agreed that the Commission should adjust state competitive ETC caps when a carrier relinquishes its ETC status and move quickly to repurpose funds for broadband. Verizon and NCTA added that adjusting state-specific competitive ETC high-cost support caps to reflect relinquished ETC status and corresponding universal service funding is essential in order to repurpose the fund for broadband as the National Broadband Plan recommends. Verizon Comments at 2-3; NCTA Reply Comments at 5; AT&T Reply Comments at 2-3. Verizon stated that this approach is also consistent with the *Interim Cap Order*, which was adopted more than two years ago to protect consumers from continuing, significant increases in competitive ETC funding. Verizon

(continued....)

relinquishes its designation in the state, rather than redistributing the excess funding to other competitive ETCs in the state. Providing the excess support to other competitive ETCs in a state would not necessarily result in future deployment of expanded voice service, much less broadband service.[12] It could simply subsidize duplicative voice service.[13] On the other hand, reducing the pool of support in a state could enable excess funds from the legacy high-cost program to be used more effectively to advance universal service broadband initiatives, as recommended by the National Broadband Plan. We conclude, on balance, that the public interest would be better served by taking this interim step to reclaim such support rather than redistributing it, particularly as we proceed with broader reforms to transition to a universal service system that promotes broadband deployment more directly.[14]

6. Accordingly, if a competitive ETC relinquishes its ETC status in a state, the cap amount for that state will be reduced by the amount of capped support that the competitive ETC was eligible to receive in its final month of eligibility, annualized. When a carrier relinquishes its ETC designation, USAC shall calculate the new annual interim cap amount for the state in which the carrier had been a competitive ETC. The cap shall be reduced by the amount of support that the ETC was eligible to receive for the last full month during which the ETC retained its designation, annualized. The new cap will be effective beginning the first full month following the effective date of the relinquishment.[15] When a carrier relinquishes its ETC designation in the middle of a funding year, the new cap will be applied only to the remainder of the year on a pro rata basis.[16] We recognize that the ultimate amount that a carrier is eligible to receive during a particular month may not be finalized immediately due to the effect of true-ups on certain high-cost support mechanisms. We instruct USAC to implement the revised interim cap provisionally as of the effective date of the relinquishment and to revise the support amounts for the remaining competitive ETCs as necessary, subject to true-up.

7. We further conclude that there is good cause for this rule change to be effective upon release.[17] The primary purpose of the 30-day effectiveness rule — to allow affected parties sufficient

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Comments at 2-3. Sprint agreed that any foregone high-cost support resulting from ETC relinquishments should not be redistributed to other carriers. Sprint Comments at 4. Free Press stated that, even in the absence of such long-term reforms, it is simply good policy to not redistribute relinquished funds to other competitive ETCs whose support levels are determined by the identical support rule. Free Press Comments at 2-3. See Appendix A for complete list of commenters.

[12] *September 2010 NPRM* at para 10.

[13] Some commenters disagreed with our proposal because they claimed that additional support would allow competitive ETCs to provide more or better service to consumers. *See* MTPCS Comments at 5-6; Letter from Jerome D. Block, Vice Chairman, New Mexico Public Regulation Commission, to Records Clerk, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 96-45, at 4 (Oct. 7, 2010); RCA Comments at 3-7; USVI PSC Comments at 6-7. However, nothing in the current rules prevents competitive ETCs from using this support for duplicative voice service.

[14] NCTA Reply Comments at 3.

[15] Consistent with the *Corr Wireless Order*, until the expiration of the waiver of section 54.709(b) or otherwise directed by the Commission, USAC shall continue to project competitive ETC demand at the full amount of the cap as established by the *Interim Cap Order*, without reflecting any adjustments to the cap due to relinquishment or revocation of ETC status by a competitive ETC.

[16] For example, if a carrier eligible to receive $1,000 in April 2011 relinquished its support effective April 30, 2011, the annual interim cap for that state would be reduced by $12,000 effective May 1, 2011. Because only eight months, or two-thirds, of the year 2011 remain, the 2011 cap would be reduced by $8,000 during the remainder of the year.

[17] 5 U.S.C. Section 553(d)(3).

time to take action to comply — does not come into play in this case since ETCs do not have to act to comply with the new rule. Sprint has notified us that it plans to relinquish its ETC designations in a number of states effective December 31, 2010.[18] If the change to the interim cap rule is not effective before then, the high-cost support that Sprint would have been eligible to receive – approximately $5.4 million – will be redistributed to other competitive ETCs, frustrating the very purpose of this rule change.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

8. This order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995.[19] In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002.[20]

B. Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act, 5 U.S.C. §604, a Final Regulatory Flexibility Analysis (FRFA) is contained in Appendix B. The Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.[21]

C. Congressional Review Act

10. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[22]

V. ORDERING CLAUSES

11. Accordingly, it is ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, , 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, this order IS ADOPTED.

12. IT IS FURTHER ORDERED that, pursuant to sections 1.103(a) and 1.4(b)(1) of the Commission's rules, 47 C.F.R. §§1.103(a) and 1.4(b)(1), this order SHALL BE EFFECTIVE upon release.

13. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final

[18] *See* Notice of Relinquishment of Eligible Telecommunications Carrier Designation, from Charles W. McKee, Vice President, Government Affairs, and Norina T. Moy, Director, Government Affairs, Sprint Nextel Corporation (dated Oct. 19, 2010) (providing notice of relinquishment of ETC designations effective December 31, 2010); Notice of Relinquishment of Eligible Telecommunications Carrier Designation, from Charles W. McKee, Vice President, Government Affairs, and Norina T. Moy, Director, Government Affairs, NPCR, Inc., d/b/a Nextel Partners (dated Oct. 19, 2010) (providing notice of relinquishment of ETC designations effective December 31, 2010).

[19] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

[20] Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

[21] *See* 5 U.S.C. § 604(b).

[22] *See* 5 U.S.C. § 801(a)(1)(A).

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Comments

Commenter	Abbreviation
ADTRAN, Inc.	ADTRAN
CenturyLink	CenturyLink
Free Press	Free Press
Independent Telephone & Telecommunications Alliance	ITTA
MTPCS, LLC d/b/a Cellular One and its affiliates	MTPCS
New Mexico Public Regulation Commission	NMPRC
Public Utilities Commission of Ohio	Ohio Commission
Rural Cellular Association	RCA
Rural Independent Competitive Alliance	RICA
Rural Telecommunications Group, Inc.	RTG
SouthernLINC Wireless and the Universal Service for America Coalition	Commenters
Sprint Nextel Corporation	Sprint
Telephone Association of Maine	TAM
United States Telecom Association	USTelecom
Verizon and Verizon Wireless	Verizon
Public Services Commission of the United States Virgin Islands	VI PSC

Reply Comments

Commenter	Abbreviation
Allied Wireless Communications Corporation Cellular South Licenses, Inc. Corr Wireless Communications, L.L.C. N.E. Colorado Cellular, Inc. PR Wireless, Inc. Union Telephone Company d/b/a Union Wireless United States Cellular Corporation	Joint Commenters
AT&T, Inc.	AT&T
Choice Communications, LLC	Choice
Commnet Wireless, LLC	Commnet
Sovernet Communications	Sovernet (Joint Reply Commenters)
CTIA–The Wireless Association	CTIA
Florida Public Service Commission	FPSC
MTPCS, LLC d/b/a Cellular One and its affiliates	MTPCS
National Cable & Telecommunications Association	NCTA
Qwest Communications International Inc.	Qwest
SouthernLINC Wireless and the Universal Service for America Coalition	Commenters
Verizon and Verizon Wireless	Verizon

APPENDIX B

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Order and Notice of Proposed Rulemaking* in WC Docket No. 05-337.[2] The Commission sought comment on the possible significant economic impact on small entities by the policies and rules proposed in the *Order and Notice of Proposed Rulemaking* (*NPRM*), including comment on the IRFA.[3] We received IRFA-specific comments from MTPCS, LLC d/b/a Cellular One and its affiliates (MTPCS), and reply comments from Verizon and Verizon Wireless (Verizon). These comments are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

I. Need for, and Objectives of, the Order

1. In this *Order*, the Commission amends its rule to reclaim high-cost universal service support surrendered by a competitive eligible telecommunications carrier (ETC) when it relinquishes ETC status in a particular state.

2. We note that the rule would reduce the overall cap on competitive ETC support in a state when a competitive ETC relinquishes its designation in the state, rather than redistributing the excess funding to other competitive ETCs in the state. Providing the excess support to other competitive ETCs in a state would not necessarily result in future deployment of expanded voice service. It could simply subsidize duplicative voice service. On the other hand, reducing the pool of support in a state could enable excess funds from the legacy high-cost program to be used more effectively to advance universal service broadband initiatives. We conclude, on balance, that the public interest would be better served by taking this interim step to reclaim such support rather than redistributing it, particularly as we proceed with broader reforms to transition to a universal service system that promotes broadband deployment more directly.

II. Summary of Significant Issues raised by Public Comments in Response to the IRFA

3. In the IRFA, we stated that, under certain circumstances, our proposed action, if adopted, may have a significant economic impact on other competitive ETCs that are small entities. For example, as described in footnote 31 of the *NPRM*, the reduction in size of a state interim cap amount could negatively affect a competitive ETC that is a small entity if another competitive ETC is later designated and receives a share of the smaller interim cap amount. While the designation of another competitive ETC would have an impact on the support received by the small entity even without the adoption of the proposed rule, the proposed rule could magnify that impact. We sought comment on our proposal, in part to consider its necessity and any alternatives. In its comments, MTPCS contends that, in accordance to the Small Business Act, the Commission should not harm the interests of small business concerns and the

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

[2] *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. September 3, 2010) (*NPRM*).

[3] *NPRM* at para. 28 and App. C.

[4] *See generally* 5 U.S.C. § 604.

customers who seek their services. MTPCS contends the reduction in competitive ETC support under the cap has limited the effectiveness of companies in their efforts to meet the goals of the universal service provisions, and the proposed changes would exacerbate this situation.[5] MTPCS further contends that, in violation of the Small Business Act, the Commission failed to consider significant alternatives to the proposals which might minimize the significant economic impact of the rule on small entities.[6] Verizon disagrees.[7] As set forth more fully below in Section V, we believe that our actions in the *Order* are consistent with the RFA.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[8] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[9] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[10] 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.[11]

5. **Small Businesses.** Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[12]

6. **Small Organizations.** Nationwide, as of 2002, there are approximately 1.6 million small organizations.[13] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[14]

7. **Small Governmental Jurisdictions.** The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[15] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[16] We estimate that, of this total,

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[5] MTPCS Comments at 2-3.

[6] *Id.*

[7] Verizon Reply Comments at 3.

[8] 5 U.S.C. § 603(b)(3).

[9] 5 U.S.C. § 601(6).

[10] 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."

[11] 15 U.S.C. § 632.

[12] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://web.sba.gov/faqs (accessed Apr. 2010).

[13] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[14] 5 U.S.C. § 601(4).

[15] 5 U.S.C. § 601(5).

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

84,377 entities were "small governmental jurisdictions."[17] Thus, we estimate that most governmental jurisdictions are small.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[18] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[19] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. **Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[20] According to Commission data,[21] 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

10. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[22] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[23] Under the present and prior categories, the SBA has deemed a wireless business

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

[18] 15 U.S. C. § 632.

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

[20] 13 C.F.R. § 121.201, NAICS code 517110.

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

[22] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.

[23] 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.

to be small if it has 1,500 or fewer employees.[24] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[25] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[26] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[27] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[28] Thus, we estimate that the majority of wireless firms are small.

11. **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.[29] The SBA has approved these definitions.[30] 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.

12. **1670-1675 MHz Services.** An auction for one license in the 1670-1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

13. **Wireless Telephony.** Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[31] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[32] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[33] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[34] We have estimated that 222 of these are small under the SBA small business size standard.

14. **Broadband Personal Communications Service.** The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F,

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[24] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

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

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

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

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

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

[30] *See Alvarez Letter 1998.*

[31] 13 C.F.R. § 121.201, NAICS code 517210.

[32] *Id.*

[33] "Trends in Telephone Service" at Table 5.3.

[34] "Trends in Telephone Service" at Table 5.3.

and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[35] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[36] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[37] 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.[38] In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[39]

15. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[40] 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.[41] 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.[42] Of the 14 winning bidders, six were designated entities.[43] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[44]

16. **Advanced Wireless Services.** In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[45] 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")

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

[36] *See PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

[37] *See Alvarez Letter 1998*.

[38] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[39] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[40] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 2339 (2001).

[41] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice*, 20 FCC Rcd 3703 (2005).

[42] *See* "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *Public Notice*, 22 FCC Rcd 9247 (2007).

[43] *Id.*

[44] *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").

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

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.[46] Four winning bidders that identified themselves as very small businesses won 17 licenses.[47] 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.

17. **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.[48] 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.[49] 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.[50] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[51] The SBA approved these small size standards.[52] The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[53] The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[54] 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.[55] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

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[46] *Id.* at 23 FCC Rcd at 7521-22.

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

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

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

[50] *See id.*

[51] *See id.* 17 FCC Rcd at 1088, ¶ 173.

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

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

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

[55] *See id.*

18. In 2007, the Commission adopted the *700 MHz Second Report and Order*.[56] The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73.[57] A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.[58] 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.[59]

19. **700 MHz Guard Band Licenses.** In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[60] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[61] 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.[62] SBA approval of these definitions is not required.[63] In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA")

[56] Service Rules for the 698-746, 747-762 and 777-792 MHz Band, WT Docket No. 06-150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone*, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, *Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, Second Report and Order, FCC 07-132 (2007) ("700 MHz Second Report and Order"), 22 FCC Rcd 15289 (2007).

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

[58] *Id.* 23 FCC Rcd at 4572-73.

[59] *Id.*

[60] *See Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000) ("*746-764 MHz Band Second Report and Order*").

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

[62] *See id.*

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

licenses.[64] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[65]

20. **Specialized Mobile Radio.** The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[66] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[67] The SBA has approved these small business size standards for the 900 MHz Service.[68] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[69] 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.[70]

21. 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.[71] 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.[72] 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.

22. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.[73] We assume, for purposes of this analysis, that all of the remaining existing

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[64] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 15 FCC Rcd 18026 (2000).

[65] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

[66] 47 C.F.R. § 90.814(b)(1).

[67] 47 C.F.R. § 90.814(b)(1).

[68] *See Alvarez Letter 1999*.

[69] *See* "Correction to Public Notice DA 96-586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

[70] *See* "Multi-Radio Service Auction Closes," *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

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

[72] *See*, "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 1736 (2000).

[73] *See generally* 13 C.F.R. § 121.201, NAICS code 517210.

extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

23. **Cellular Radiotelephone Service**. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[74] Bidding credits for designated entities were not available in Auction 77.[75] 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.[76]

24. **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.[77] 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.[78]

25. 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.

26. **Rural Radiotelephone Service**. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[79] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[80] 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.[81] 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.

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

[75] *Id.* at 6685.

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

[77] *See* 13 C.F.R. § 121.201, NAICS code 517210.

[78] *See generally* 13 C.F.R. § 121.201.

[79] The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

[80] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

[81] 13 C.F.R. § 121.201, NAICS code 517210.

27. **1.4 GHz Band Licensees.** The Commission conducted an auction of 64 1.4 GHz band licenses [82] in 2007.[83] In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[84] Neither of the two winning bidders sought such designated entity status.[85]

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

28. The *Order* does not propose any reporting, recordkeeping, or other compliance requirements.

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

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[86]

30. In this *Order*, we amend our rule to reclaim high-cost universal service support surrendered by a competitive ETC when it relinquishes ETC status in a particular state. We note that the rule would reduce the overall cap on competitive ETC support in a state when a competitive ETC relinquishes its designation in the state, rather than redistributing the excess funding to other competitive ETCs in the state. Providing the excess support to other competitive ETCs in a state would not necessarily result in future deployment of expanded voice service but it may subsidize duplicative voice service. Reducing the pool of support in a state would enable excess funds from the legacy high-cost program to be used more effectively to advance universal service broadband initiatives. We believe, on balance, that the public interest would be better served by taking this interim step to reclaim such support rather than redistributing it, particularly as we proceed with broader reforms to transition to a universal service system that more directly promotes broadband deployment. .

31. MTPCS contends that the Commission is adopting the proposed rule without considering any significant alternative to minimize its effect on small entities.[87] In addition, MTPCS contends that reining in high-cost disbursements need not be accomplished at the expense of competitive ETCs.[88] Verizon disagrees. Verizon argues that adjusting a state's existing competitive ETC cap when a carrier relinquishes its ETC status does not in any way impact the amount of existing support paid to other

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[82] *See "Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,"* Public Notice, 21 FCC Rcd 12393 (WTB 2006).

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

[84] *Auction No. 69 Closing PN*, Attachment C.

[85] *See Auction No. 69 Closing PN.*

[86] 5 U.S.C. § 603.

[87] MTPCS Comments at 7.

[88] MTPCS Comments at 10.

competitive ETCs, small businesses or otherwise, in the state. Verizon explains that, in such circumstances, the relinquished support is simply returned to the USF.[89] Verizon indicates that the Commission is merely required by the Regulatory Flexibility Act to describe any significant alternatives that it considered. Verizon reasons that, as a practical matter, there is no alternative that the Commission need consider. The proposal does not reduce existing funding to any competitive ETC. Verizon argues that, even if it did, the universal service program was never intended to fund competition anyway.[90] We conclude that, because the purpose of the adopted rule is to reduce the amount of high-cost universal service support received by competitive ETCs, no significant alternative could be chosen that would minimize the effect of the adopted rule.

VI. Report to Congress

32. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.[91] In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[92]

[89] Verizon Reply Comments at 3.

[90] *Id.*

[91] *See* 5 U.S.C. § 801(a)(1)(A).

[92] See 5 U.S.C. § 604(b).

DISSENTING STATEMENT OF COMMISSIONER MICHAEL COPPS

In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45.

I continue to support the use of competitive eligible telecommunications carrier (CETC) support surrendered by Verizon Wireless and Sprint Nextel to meet our national broadband goals. However, I am concerned that our action today does not adequately take into account what may be ongoing issues in the states where CETCs relinquish their ETC status. At this time, the Public Utilities Commission of Nevada is investigating whether post-merger Verizon Wireless properly followed the state ETC designation process before reporting line counts for state and federal high-cost support. This investigation has not concluded. I would be seriously concerned if this Order is used to bless any activity that is currently under state review.