B. Legal Basis

13. The Further Notice of Proposed Rulemaking , including publication of proposed rules, is authorized under sections 1,2, 4(i)-(j), 201(b), 254, 257, 303(r), and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 254, 257, 303(r), 503, and 1302.[107]

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

14. 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, if adopted.[108] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[109] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[110] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[111] Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[112] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[113] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[114] 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."[115] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[116] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[117] Thus, we estimate that most governmental jurisdictions are small.

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[107] 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 254, 257, 303(r), 503, 1302.

[108] 5 U.S.C. § 603(b)(3).

[109] 5 U.S.C. § 601(6).

[110] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, 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." 5 U.S.C. § 601(3).

[111] Small Business Act, 15 U.S.C. § 632.

[112] *See* Small Business Administration, Office of Advocacy, Frequently Asked Questions, http://www.sba.gov/advocacy/7495 (last visited March 2, 2011).

[113] 5 U.S.C. § 601(4).

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

[115] 5 U.S.C. § 601(5).

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

[117] 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, page 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.*

1. Wireline Providers

15. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[118] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[119] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[120] 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. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.[121]

16. 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.[122] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.[123] 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.[124] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[125] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have

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

[119] *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*).

[120] *See id.*

[121] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[122] 13 C.F.R. § 121.201, NAICS code 517110.

[123] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[124] *See Trends in Telephone Service* at Table 5.3.

[125] *See id.*

1,500 or fewer employees.[126] In addition, 72 carriers have reported that they are Other Local Service Providers.[127] Seventy of which have 1,500 or fewer employees and two have more than 1,500 employees.[128] 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.

17. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[129] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.[130] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[131] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[132] 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.

18. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[133] Under that size standard, such a business is small if it has 1,500 or fewer employees.[134] Census Bureau data for 2007, which now supersede 2002 Census data, show that there were 3,188 firms in this category that operated for the entire year. Of the total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more.[135] Thus under this category and the associated small business size standard, the majority of these interexchange carriers can be considered small entities.[136] According to Commission data, 33 carriers

[126] *Id.*

[127] *See id.*

[128] *See id.*

[129] 13 C.F.R. § 121.201, NAICS code 517110.

[130] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

[131] *See Trends in Telephone Service* at Table 5.3.

[132] *See id.*

[133] 13 C.F.R. § 121.201, NAICS code 517110.

[134] *Id.*

[135] *See Wired Telecommunications Data*, *supra* note 33.

[136] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose (continued....)

have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.[137] Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

19. *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.[138] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[139] Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[140] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[141] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

20. *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.[142] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[143] Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,[144] 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

21. *Pre-paid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for pre-paid calling card providers. The appropriate size

(Continued from previous page)
"Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517110 in the left column for "Wired telecommunications carriers") (last visited March 2, 2011).

137 *Trends in Telephone Service* at Table 5.3.

138 13 C.F.R. § 121.201, NAICS code 517911.

139 U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

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

141 *Id.*

142 13 C.F.R. § 121.201, NAICS code 517911.

143 U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

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

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.[145] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[146] Thus under this category and the associated small business size standard, the majority of these pre-paid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of pre-paid calling cards.[147] Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[148] Consequently, the Commission estimates that the majority of pre-paid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

2. Wireless Carriers and Service Providers

22. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[149] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[150] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[151] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[152] 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. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony,

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[145] 13 C.F.R. § 121.201, NAICS code 517911.

[146] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517911 in the left column for "Telecommunications Resellers") (last visited March 2, 2011).

[147] *See Trends in Telephone Service* at Table 5.3.

[148] *See id.*

[149] U.S. Census Bureau, 2007 NAICS Definitions: Wireless Telecommunications Categories (except Satellite), http://www.census.gov/naics/2007/def/ND517210.HTM (last visited March 2, 2011).

[150] U.S. Census Bureau, 2002 NAICS Definitions: Paging, http://www.census.gov/epcd/naics02/def/NDEF517.HTM (last visited March 2, 2011); U.S. Census Bureau, 2002 NAICS Definitions: Other Wireless Telecommunications, http://www.census.gov/epcd/naics02/def/NDEF517.HTM (last visited March 2, 2011).

[151] 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).

[152] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Wireless Telecommunications Carriers (except Satellite)") (last visited March 2, 2011).

including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[153] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[154] 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.

24. *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.[155] The SBA has approved these definitions.[156] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

25. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[157] The second has a size standard of $25 million or less in annual receipts.[158]

26. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[159] Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.[160] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[161] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

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[153] *See Trends in Telephone Service* at Table 5.3.

[154] *See id.*

[155] *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).

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

[157] 13 C.F.R. § 121.201, NAICS code 517410.

[158] 13 C.F.R. § 121.201, NAICS code 517919.

[159] U.S. Census Bureau, 2007 NAICS Definitions, Satellite Telecommunications, http://www.census.gov/naics/2007/def/ND517410.HTM (last visited March 2, 2011).

[160] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Satellite Telecommunications") (last visited March 2, 2011).

[161] *Id.*

27. The second category, i.e. "All Other Telecommunications" comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry."[162] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[163] Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999.[164] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

28. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[165] 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.[166] The 2007 census also contains data for the specific category of "Paging" "that is classified under the seven-number North American Industry Classification System (NAICS) code 5172101.[167] According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees.[168] Consequently,

[162] U.S. Census Bureau, 2007 NAICS Definitions, All Other Telecommunications, http://www.census.gov/naics/2007/def/ND517919.HTM (last visited February 2, 2012).

[163] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ4: Receipts Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517919 in the left column for "All Other Telecommunications") (last visited March 2, 2011).

[164] *Id.*

[165] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 517210 in the left column for "Wireless Telecommunications Carriers (except Satellite)") (last visited March 2, 2011).

[166] 13 C.F.R. § 121.201, NAICS code 517210.

[167] U.S. CENSUS BUREAU, AMERICAN FACTFINDER, 2007 ECONOMIC CENSUS, http://factfinder.census.gov, (find "Economic Census" and choose "get data." Then, under "Economic Census data sets by sector...," choose "Information." Under "Subject Series," choose "EC0751SSSZ5: Employment Size of Firms for the US: 2007." Click "Next" and find data related to NAICS code 5172101 in the left column for "Paging") (last visited March 2, 2011). In this specific category, there were 248 firms that operated for the entire year in 2007. Of that number 247 operated with fewer than 100 employees and one operated with more than 1000 employees. Based on this classification and the associated size standard, the majority of paging firms must be considered small.

[168] *See Trends in Telephone Service* at Table 5.3.

the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging Third Report and Order, the Commission 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.[169] 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.[170] The SBA has approved these small business size standards.[171] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[172] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

29. *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).[173] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[174] According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.[175] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[176] We have estimated that 222 of these are small under the SBA small business size standard.

3. Internet Service Providers

30. 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,[177] which has an SBA small business size standard of 1,500 or fewer employees.[178] The latter are within the category of All Other Telecommunications,[179] which has a size

[169] 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).

[170] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, Small Business Administration (Dec. 2, 1998).

[171] *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, paras. 98-107 (1999).

[172] *Id.* at 10085, para. 98.

[173] 13 C.F.R. § 121.201, NAICS code 517210.

[174] *Id.*

[175] *See* Trends *in Telephone Service* at Table 5.3.

[176] *Id.*

[177] U.S. Census Bureau, 2007 NAICS Definitions: Wired Telecommunications Carriers, http://www.census.gov/naics/2007/def/ND517110.HTM (last visited March 2, 2011).

[178] 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

[179] U.S. Census Bureau, 2007 NAICS Definitions: All Other Telecommunications, http://www.census.gov/naics/2007/def/ND517919.HTM (last visited March 2, 2011).

standard of annual receipts of $25 million or less.[180] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[181] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[182] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[183] Consequently, we estimate that the majority of ISP firms are small entities.

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

31. *Tribal Lands Lifeline Support.* If we permit eligible residents of Tribal lands to apply their allotted Tribal Lands discount amount to more than one supported service per household, postpaid carriers may need to update their billing systems to reflect that more than one supported service may be received per Tribal household. Additionally, several carriers currently allow consumers to apply their Lifeline discount to the purchase of family shared calling plans, and, if such a rule were adopted, a similar billing functionality could be used by postpaid carriers serving eligible residents of Tribal lands. The Commission is continuing to evaluate the potential costs and benefits of this proposal and will take the steps necessary to mitigate the costs to small businesses.

32. *Mandatory Application of Lifeline Discount to Bundled Service Offerings*. The *FNPRM* seeks comment on whether to require ETCs to permit subscribers to apply their Lifeline discount to any bundle that includes a voice component. The *FNPRM* also seeks comment on whether there should be any limitations on this requirement (*e.g.*, should ETCs be obligated to offer a Lifeline discount on all of their service plans, including premium plans and packages that contain services other than voice and broadband, such as video). While we do not anticipate that these proposals will have an impact on small businesses at this time, we recognize that small entities may incur costs due to a need to update their internal systems to comply with the rule.

33. *Record Retention Requirements.* The Commission proposes to amend section 54.417 of the Commission's rules to extend the retention period for Lifeline documentation, including subscriber-specific eligibility documentation, from three years to at least ten years. ETCs will continue to maintain documentation of consumer eligibility for at least ten years and for as long as the consumer receives Lifeline service from that ETC, even if that period extends beyond ten years. The amended recordkeeping requirement will continue to apply equally to all ETCs, all of whom are currently required to maintain Lifeline documentation, including subscriber-specific eligibility documentation, for at least three years.

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

34. *Eligibility database.* For the period prior to the implementation of a national eligibility database, in the *FNPRM* we consider the alternative of having third-party administrators, as opposed to the ETCs, be responsible for verifying Lifeline consumers' eligibility in the program. Accordingly, we

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[180] 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

[181] U.S. Census Bureau, 2002 NAICS Definitions: Internet Service Providers, Web Search Portals, and Data Processing Services, http://www.census.gov/epcd/naics02/def/NDEF518.HTM (last visited March 2, 2011).

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

[183] An additional 45 firms had receipts of $25 million or more.

seek comment on how to minimize or mitigate extra costs to the Fund caused by the selection of third-party administrators.

35. *Limitations on the Resale of Lifeline-Supported Services*. As part of the effort to reduce waste, fraud, and abuse in the program, the Commission proposes to allow only ETCs with a direct relationship with the end-user Lifeline subscriber to seek reimbursement from the Fund. To the extent that a reseller who is not an ETC is receiving support from the Fund, there could be an economic impact should this change be adopted, but the Commission believes that the need to protect the Fund from abuse outweighs any concerns with existing carriers raising concerns with the economic impact of the proposed rule. Furthermore, if there is an economic impact from this proposal, we seek comment on how to minimize the burdens of such a requirement on small entities. Accordingly, we seek comment on the potential economic impact of these requirements.

F. Federal Rules that May Duplicate or Conflict with Proposed Rules

36. None.

STATEMENT OF CHAIRMAN JULIUS GENACHOWSKI

Re: *Lifeline and Link Up Reform and Modernization,* WC Dkt. No. 11-42; *Lifeline and Link Up*, WC Dkt. No. 03-109; *Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training*, WC Dkt. No. 12-23

For more than 25 years, the Lifeline program has played a vital role in ensuring that the neediest among us stay connected to our communications networks.

Today, the FCC reforms and modernizes the program for the 21st century, eliminating waste and misuse of public funds, imposing fiscal discipline and accountability, and ensuring that the program satisfies Congress's directive that – quote – "[c]onsumers in all regions, including low-income consumers ... should have access to telecommunications and information services."

The reforms we're adopting today are major. This is a fundamental overhaul to make sure that an important program is efficiently and effectively meeting its mission. It says to anyone contemplating gaming the system: Don't bother, you'll be caught and punished.

Our steps today build on our earlier reforms – in particular our recent overhaul of the largest part of the Universal Service Fund, where together we transformed an inefficient, out-of-date program into the Connect America Fund – using market mechanisms to control costs and put the country on the path to universal broadband by the end of the decade.

Today, as part of our modernization of Lifeline, we execute on another key recommendation of the National Broadband Plan to begin transitioning Lifeline to support broadband. We do so with a seriousness of purpose – because broadband is rapidly becoming a necessity, not a luxury; and we do so with humility, because it is not easy to determine how Lifeline can best be transformed into a program that supports broadband.

When this Commission inherited Lifeline more than two years ago, the program faced real and serious challenges, including rules that failed to keep pace with the boom in mobile service; created perverse incentives for some carriers; and, as we came to see, invited fraud and abuse. Since then, we've rolled up our sleeves to put this program on a sound path and strong foundation.

The process of reforming Lifeline started with the release of the National Broadband Plan in early 2010. In the spring of 2010, I asked the Federal-State Joint Board on Universal Service to scrutinize the Lifeline program and offer recommendations for reform. Last year, the FCC proposed rules that built on the Joint Board's recommendations – and today's Order implements many of those ideas.

But we haven't waited to complete the rulemaking to take concrete steps to tackle fraud and abuse. Last June, the Commission adopted an order clarifying that an eligible consumer may only receive one Lifeline-supported service, creating procedures to detect and de-enroll subscribers with duplicate Lifeline-supported services. Working in close cooperation with CTIA and major Lifeline providers including AT&T, CenturyLink, Sprint, TracFone, and Verizon, we've established an unprecedented process to detect and eliminate duplicative Lifeline support—a process now underway in 12 states, that will expand to additional states in the months ahead.

I want to acknowledge the good faith and willingness to constructively engage that industry has demonstrated in helping address this problem. Thanks to this joint effort, we've already identified more than 200,000 duplicative Lifeline subscriptions for elimination – saving millions of dollars every month.

Today's Order builds on this progress.

Let me be clear: We will not tolerate waste or misuse of program funds. Today's reforms are strong and meaningful. In our Order, we set a savings target for 2012 of $200 million, and a mechanism to ensure we realize those savings. Over the next three years, staff estimates that today's reforms will save up to $2 billion compared to the status quo. That is a lot of money in the pockets of American consumers who otherwise would have been contributing to a program that was wasting funds on duplicative benefits, subsidies for ineligible consumers, or fraudulent misuse of Lifeline funds.

After evaluating the impact of today's fundamental overhaul of the program and addressing key issues teed up in the Further Notice of Proposed Rulemaking, including the appropriate monthly support amount, the Commission will be in a position to adopt a budget for the program in early 2013.

An important part of our reform is our establishment of databases, including a National Lifeline Accountability Database. This database approach will prevent multiple carriers from receiving support for the same subscriber and streamline the process of verifying consumers' initial and ongoing eligibility for the program, significantly reducing burdens on carriers and improving protections against waste and fraud. It will also reduce burdens on consumers participating in the program.

This is another example of the commission harnessing communications and information technology to do our work better, to help consumers, and to reduce burdens on both the companies that participate in these programs and the FCC itself.

We seek comment on ways to further streamline burdens on participating carriers, to improve program efficiency, and to encourage voluntary participation in Lifeline.

As Commissioner McDowell said earlier, we are moving forward today with fiscally responsible entitlement reform.

And we are doing it in a way that saves hundreds of millions of dollars and that will not cut off eligible, needy consumers from the vital lifeline to our basic communications grid.

Who are the people that benefit from Lifeline? They are people like a woman we heard about in South Pittsburg, Tennessee who was thrown from her car in a severe accident and used her phone to call 9-1-1 and receive immediate assistance. Or a veteran in Shady Springs, Florida who relies on his Lifeline phone to communicate with the V.A. hospital to obtain medications and organize hospital visits. And the man in Memphis who used a Lifeline phone to help with his job search, which ended with his now-current employer calling him – on his Lifeline phone -- to offer a job.

This Order is not only about increasing efficiency and eliminating waste. It's also about making sure the service is there for people who need it like the ones I mentioned. And it's about beginning to modernize Lifeline from telephone service to broadband.

Broadband, as Commissioner Clyburn has said, has gone from being a luxury to a necessity in the 21st century.

It's increasingly essential for finding a job, for example, as job postings have moved online, and for landing a job, as companies increasingly require basic digital skills.

As everyone who has followed our work knows, one-third of Americans haven't adopted broadband at home, and the majority of low-income Americans are non-adopters.

Recognizing that Lifeline was established to make sure low-income Americans have access to telecommunications and information services, and that voice will ultimately be just another application on our broadband networks, it makes sense to begin to transition Lifeline to support broadband.

Consistent with the language and purposes of the Communications Act, the Order starts by establishing as a core program goal ensuring universal availability of broadband for low-income Americans. To determine how best to achieve that goal, we're using a fraction of the savings we're realizing from today's reforms to launch a Broadband Adoption Pilot Program.

We're asking broadband providers to submit project proposals, and data from the projects we choose would be rigorously analyzed to ensure a full understanding of how best to transition Lifeline to support broadband.

In addition to our work, the work that we seek from entities like Connect to Compete and some of the BTOP programs will also be helpful in determining a smart course going forward.

In addition to cost, we know that a lack of digital literacy is a major barrier to broadband adoption. That's why we propose using savings from Universal Service Fund reforms to increase digital literacy training at libraries and schools. Digital literacy training not only promotes broadband adoption, but it could also arm more Americans with the skills they need to fully participate in our 21st century economy and society.

In my view, it would be irresponsible not to begin testing ideas to harness broadband to help connect low-income Americans, improving our economy and our kids' education. Other countries are moving ahead in this area, and it's essential to our global competitiveness that we use every tool at our disposal to win the broadband race.

In moving forward, as I mentioned, we will build on the excellent projects that have already been launched – ranging from BTOP programs focused on adoption, to the Connect to Compete initiative supported by the cable industry and other major companies and non-profit organizations.

I want to thank all those who contributed to this Order, including my fellow Commissioners, whose deep engagement with this item is reflected in many parts of the Order.I'm proud of the process we ran to produce this Order.

It presented many difficult issues, as you heard from our statements. Staff has worked on this very hard for quite some time, and the three of us reached agreement quickly on many issues. On other issues, we found ourselves in different places – three different places to be precise. But with a shared commitment to doing the right thing – to connecting needy Americans and to fiscal responsibility – we worked through some challenging issues together, as recently as yesterday. I'm grateful for each of my colleagues and our staffs for staying at the table and discussing the issues until we found a path through.

I want to thank the Joint Board and state commissions across the country, who again have demonstrated the tremendous value they provide by serving as laboratories for policy innovation and as partners in ensuring universal service.

Some of the best ideas we adopted today we learned about and felt comfortable adopting because they had been implemented in states across the country and we can see the data and measure the results.

Finally, thank you again to the outstanding staff who worked on this. For those of you who have been working on various Universal Service Fund matters over the past years, thank you very much, and to the new people who just joined the Lifeline effort and really focused on the unique issues that related to modernizing, reforming, and improving this program, you have the public's gratitude as well as all of ours.

In addition to the Wireline Competition Bureau, these items benefited from the Wireless Bureau, the General Counsel's Office, the Consumer and Governmental Affairs Bureau and other intra-agency cooperation.

It took a lot of months and a lot of hard work, and I hope you feel as proud as I do about the results we are accomplishing today, and that the agenda is going forward.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART

Re: *Lifeline and Link Up Reform and Modernization,* WC Docket No. 11-42; *Lifeline and Link Up,* WC Docket No. 03-109; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training,* WC Docket No. 12-23

Today the Federal Communications Commission is making the most fundamental, constructive and radical changes to the Lifeline program since its inception. We are infusing it with fiscal discipline for the first time. As a result, the program will be on track to become a more efficient tool to fulfill Congress's intended purpose: helping low-income Americans stay connected to society through telecommunications services.

In the Telecommunications Act of 1996, Congress explicitly mandated that we manage this program to help the disadvantaged. At the same time, Congress wants us to be fiscally prudent to maximize Lifeline's effectiveness for the truly eligible. With this legislative intent in mind, our action today will help eliminate waste, fraud and abuse to yield resources for those most in need while bending the unabated growth curve downward.

As I have said repeatedly since first joining the Commission, my primary goal for Universal Service reform is to instill fiscal discipline to the program. Today we largely achieve that goal for the Lifeline program in the near term. Although I would have preferred a longer-term fixed budget or cap, what we are rendering today is virtually unheard of in Washington: fiscally responsible entitlement reform.

On the bright side, some of the most appealing aspects of today's actions include the following:

- Establishing an aggressive savings target of $200 million for this calendar year alone, with a projected $600 million in savings in 2013;
- Largely eliminating the Link Up program to end perverse incentives for companies to enroll those who may not be eligible, while granting a limited exception to the unique circumstances facing Tribal and Alaska Native Lands;
- Limiting support to one recipient per household;
- Creating a database to weed out duplicate recipients;
- Accelerating the process of creating a database to verify eligibility;
- Requiring pre-paid ETC accounts that have been inactive for 60 days to be removed from the Lifeline program; and
- Commencing a process for a mechanism I have long advocated: basing subsidies on a "communications price index" that should reduce financial support per subscriber as communications networks become more efficient as technology advances.

Therefore, I am voting to approve these measures.

Today's Order is not perfect, however. Due to their inherent nature, many of the assumptions used to shape our decisions are not reliable for long-term planning, making a lasting solution improbable until we can gather more critical data over the next year. Nonetheless, Commission staff has worked diligently to find the best data and cost models available today to make essential economic and financial projections. Accordingly, I have concerns about relying on these assumptions and models to forecast costs and savings for longer than beyond the current year. Among the variables that make a longer-term solution less practical are the effectiveness of the database that is designed to eliminate duplicates, the design of the prospective database that will verify eligibility and a variety of economic factors. While we bend the growth curve this year, we will be able to make even more progress next year once we have built the systems needed to administer meaningful reform.

In light of these limitations, the Commission will hold itself accountable and render an assessment of the program within six months from today, followed by a more comprehensive and formal report due next year. Based on the information and analyses contained in those reports, next year the Commission will trim the sails of today's reform to maintain our course toward more fiscally prudent shores. In other words, our improvements to the Lifeline program will remain in "beta" mode while we continue to work to maximize its efficiencies.

Please keep in mind that although Congress's intent to maintain a communications lifeline for low-income Americans is clear, the Universal Service program is structured so that consumers who can afford phone service subsidize those who cannot. In short, some consumers pay artificially high rates so others may enjoy artificially low rates, or no rate at all. Accordingly, when we spend more on Universal Service to help the Fund's recipients, we are essentially "taxing" all other phone consumers whether they are rich or poor. This Universal Service contribution mechanism, or "tax," is highly regressive. I hope those who have advocated we adopt no spending restraints at all will understand that many Americans are just scraping by in this economy. Fiscal irresponsibility would hurt them the most. Recent estimates reveal that approximately 24 million Americans are underemployed, and many are paying their phone bills in full therefore subsidizing others. Our action today attempts to limit how much we rob Peter to subsidize Paul. The Order is imperfect in this regard, however, which underscores the urgency of tackling Universal Service contribution reform as soon as possible.

Although the Order optimistically claims that our action may save the program "up to $2 billion," I am not confident in that assertion. As a result, I concur in part while being pleased that we will review the progress of these reforms before the end of the year.

Furthermore, it should come as no surprise that I cannot support my colleagues' continued interpretation of section 706 as granting us broad powers. It does not. Additionally, I don't believe it is fiscally prudent for us to launch pilot programs that are likely to increase the Lifeline program's costs. We certainly shouldn't be laying the foundation for inflating the program before shoring up its finances. Accordingly, I respectfully dissent from these portions of the Order.[184]

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[184] In addition to the significant budgetary effects of expanding Lifeline to broadband, I have concerns regarding the legal authority that the Commission relies upon to launch the broadband pilot. First, this Order relies on section 706 of the 1996 Act, in part, for its legal authority for establishing a broadband pilot. By referencing the findings of the previous two "706 reports," this Order notes that those reports triggered the Commission's duty under Section 706(b) to "remove[e] barriers to infrastructure investment" and "promot[e] competition in the telecommunications market." I dissented from both of those 706 reports, and have often noted that section 706 is narrow in scope and does not provide the Commission with specific or general authority to do much of anything.

As part of its analysis, this Order points to section 706(a), a provision which opens with a policy pronouncement that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced

(continued....)

In sum, I commend the Chairman for his leadership and diligence in pushing forward these unprecedented reform efforts. I also have appreciated working with Zac Katz who is always willing to listen to our perspectives and has tried to find creative solutions. Congrats on completing your last open meeting item before jumping into your new role as Chief of Staff. I have also enjoyed working with Commissioner Clyburn and look forward to collaborating with all of my colleagues on speeding up the process for the establishment of the eligibility database. Finally, my heartfelt thanks go to Sharon Gillett, Carol Mattey, Trent Harkrader, Kim Scardino and the legions of additional bureau staff who have worked countless hours on not only the development of this item but have also been instrumental in uncovering much of the waste, fraud and abuse in this program. We are making historic progress today, but we have even more work to do in the coming year.

(Continued from previous page)
telecommunications capability to all Americans." 47 U.S.C. 1302(a). However, as the the D.C. Circuit Court has previously noted, "under Supreme Court and D.C. Circuit case law statements of policy, by themselves, do not create 'statutorily mandated responsibilities.'" *Comcast Corp. v. FCC*, 600 F.3d 642, 644 (D.C. Cir. 2010). Rather, "[p]olicy statements are just that – statements of policy. They are not delegations of regulatory authority." *Id.* at 654. The same holds true for congressional statements of policy, such as the opening of Section 706, as it does for any agency's policy pronouncements. Equally troubling is this Order's reliance on section 706(b) which states that if the FCC determines that broadband is not being deployed to all Americans in a reasonable and timely fashion, the Commission shall "take immediate action to accelerate deployment of such capability by removing barriers to *infrastructure* investment and by promoting competition in the telecommunications market." 47 U.S.C. § 1302(b) (emphasis added). Providing a subsidy to consumers for broadband access does not constitute infrastructure investment nor does it promote competition. I disagree with the Order's line of reasoning that providing a government subsidy to individuals somehow translates into removing infrastructure barriers because it could free up revenue to be used for buildout.

This Order attempts to lay the groundwork for expansion of the broadband pilot in the future by establishing a performance goal to "ensure the availability of broadband service for low-income Americans." This Order's analysis is analogous to arguments set forth in last year's 706 report which equated "availability" with "affordability" in the context of section 706. I have previously disagreed with such arguments. By way of background, last year's 706 report made the leap that Congress did not mean "physical" deployment when referring to "deployment" and "availability." It conceded that the Act does not define the terms "deployment" and "availability." Instead of looking to the plain statutory language to determine Congress' intent, however, the Commission relied on legislative report language to argue that even if broadband is physically deployed to a particular area but is not affordable, it is *not* considered available under section 706. But, the actual statutory language says otherwise, stating that as part of the inquiry, the Commission should look at demographic information for "geographical areas that are *not served* by any provider of advanced telecommunications capability." 47 U.S.C. 1302(c) (emphasis added).

Thus, for the forgoing reasons, I respectfully dissent from any parts of this Order which rely on section 706. Also, specifically, I dissent from the adoption of the goal to ensure the availability of broadband service for low-income Americans (Order at paras. 25, 26, 33-36) and the establishment of the broadband pilot (Order at paras. 321-354.)

STATEMENT OF COMMISSIONER MIGNON L. CLYBURN APPROVING IN PART, CONCURRING IN PART

Re: *Lifeline and Link Up Reform and Modernization,* WC Docket No. 11-42; *Lifeline and Link Up,* WC Docket No. 03-109; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45; *Advancing Broadband Availability Through Digital Literacy Training,* WC Docket No. 12-23

Our Lifeline program is exactly that—a lifeline—for millions of low-income consumers who couldn't otherwise afford telephone service. Today's Order completely reforms and stabilizes this program and will ensure its survivability so that it can continue to serve our most vulnerable citizens.

Over the last few years, the FCC has spent an incredible amount of time, promoting and advancing what most would agree, is the greatest infrastructure challenge of the 21st Century—broadband. With its transformative and enabling powers, broadband is a means by which all Americans can enhance their extraordinary vision and actualize their greatest potential. Today, with respect to this Order, we are making yet another significant installment in our quest for universal broadband deployment and adoption, especially for our low-income citizens. I agree wholeheartedly that these consumers are significantly disadvantaged when broadband is not within their reach. But without telephone service, the disadvantage for them *is* most *severe*. Without the capability to call employers, schools, doctors, 911, and family and friends, those already vulnerable consumers are further isolated, and managing their day-to-day lives becomes extremely difficult.

We have hundreds of testimonials from economically challenged consumers about how their subsidized Lifeline phone service has benefitted them and what that connection means to them personally. Of course, when I read these stories, they touch my heart, but I also can't help but appreciate what those subsidized connections mean to all of us, as a society. Regardless of our means, we are able to communicate with one another, whether we are separated by a city block, or are miles apart, through the convenience of a simple device. The benefits that this capability has contributed to our nation are immeasurable, and the Lifeline program has been key in this achievement. Indeed, the telephone penetration rate for consumers with income less than $10,000 has steadily increased in the last few years, and I think that's a very good demonstration that the Lifeline program is helping us realize the universal service goals Congress mandated in Section 254 of the Act, which is to ensure *affordable* phone service for *every* American.

We have seen more low-income consumers participate in the Lifeline program than ever before over the last few years, and I believe part of that is due to the economy. Over 46 million Americans are living in poverty. This is about 15 million more people than in 2000. Of those, we know that after paying for their basic necessities—not including phone service—I am talking food, shelter and health care—these citizens don't have any disposable income left. So you can see why more low-income consumers are turning to the Lifeline program for help. The other reason the number of Lifeline consumers has grown, is that new entrants, such as mobile phone providers, have started offering Lifeline products. These new options have allowed many low-income consumers to access mobile networks for the first time. And for those on a strict budget, that wireless option may be the most efficient means of staying in touch with family, employers and caregivers. So none of us should be surprised that low-income consumers want access to mobile networks.

Today we are taking steps to ensure that more eligible citizens are afforded the opportunity to benefit from this worthwhile program. No qualifying consumer will be cut off or unable to obtain the benefits of the Lifeline program as a result of our reforms today. There will be no minimum charge on consumers participating in this program. Far too many of them are unbanked, and the cost of sending even a small payment to the carrier far outweighs the charge imposed and would just be another barrier to them participating in and receiving the benefits of the program. Moreover, we are taking steps to better serve the homeless population, including permitting those living in shelters to sign up, and we are seeking comment on how we can better coordinate with the Department of Veterans Affairs in serving our brave heroes who have sacrificed for us, yet do not have a permanent home.

We also are taking significant measures to ensure that all waste is expunged from the Lifeline program. We have evidence on our record that there are duplicates—that is, individuals who have obtained more than one benefit. This is primarily a result of more competition and the lack of a nationwide database to ensure that individual low-income consumers aren't signed up twice. In addition, there has been some confusion about the program's requirements, and not just among the consumers, but also with the service providers. Consumers haven't been properly educated about the program's rules, or even understood which services are Lifeline-subsidized, as evidenced by the consumer reaction during last year's duplicate resolution process, when many were surprised and dismayed by the letters they received from USAC. The bottom line is this: there are numerous reasons why the program has grown, and it's important that the steps we take today to reform the program are balanced with the purpose and goals of the program—to ensure that affordable phone service is available for low-income consumers.

Many have weighed in on whether it is appropriate for us to cap the program or set a budget at this time. However, I cannot support a cap of a program whose goal it is to ensure the affordability, and thus the availability of basic telephone service for our most vulnerable citizens. One national wireless carrier submitted its survey findings of the makeup of its Lifeline subscribers in our record and found that approximately 83 percent of its Lifeline subscribers make less than $15,000 a year. Their average age is 51, and most of them are female. If we don't ensure their ability to access phone service, then we will be doing a great disservice to them and our nation, and we would not be meeting the requirements of Congress' mandate to provide universal service.

I want to thank the Chairman for working with me on the steps we should take today to manage the size of the Fund. I understand and embrace the need for fiscal responsibility, and the reforms we adopt today provide the best means to realize significant savings which will help us accomplish that goal. But at this juncture it is best for us to provide a baseline for how the reforms we adopt today unfold over the next year. I support the Chairman in setting a target for the savings we expect will be realized in 2012. The Bureau will be reporting to us in six months and then again in one year on whether the reforms met our savings target. I believe it is appropriate for us to first review how the reforms impact the size of the Fund, and whether our assumptions and projections are accurate, whether growth of the Fund is impacted by changes in the macroeconomic conditions and the number of consumers who initiate Lifeline service, and the impact of competitive Lifeline offerings in the program this year. This enhanced information will be important in any consideration for next steps. Only at that point, will we have the type of information needed to revisit the issue of a budget. As always, I will keep an open mind, but I cannot guarantee anyone that I will support any particular budget before we have seen this data. Nevertheless, I look forward to working with the Chairman, Commissioner McDowell, and hopefully two additional Commissioners next year on this issue, as well as the other matters raised in the Further Notice.

I, of course, support the Chairman's objective that the Lifeline program should include the goal of addressing broadband affordability for low-income consumers. I believe pilot projects are an appropriate first step to determine the best way to address the digital divide for low-income consumers in the Lifeline program. Although I wish we had adopted this pilot program soon after our workshop on this issue in 2010, I am grateful we are now charging ahead, and am hopeful that this program, along with other public and private sector efforts underway, will help us complete the modernization of this program that is contemplated in today's Order.

When everyone is connected to the networks, then the value of those networks increases. This is true for both voice and broadband services. Through the universal service fund and the private sector, our nation has invested hundreds of billions of dollars in our voice networks. Last October, we committed to spending $4.5 billion a year to build broadband-capable networks. But when a segment of our fellow citizens cannot access those networks because they cannot afford to, we are all experiencing a loss. With respect to broadband, the statistics are startling. Less than a third of the poorest Americans in this country have adopted broadband. However, access to broadband service is not a luxury, it is a necessity. The importance of broadband to economic opportunity and quality of life in our nation is unquestionable. It is difficult to look and apply for a job, complete a school assignment, or access government services and resources—which consistently are moving online to save costs—without a broadband connection. Studies repeatedly show that cost is the greatest barrier to broadband adoption for low-income consumers. While we have seen some significant steps in the public and private sectors to bridge the affordability gap, it will take a considerable commitment of this nation and this agency to achieve a broadband penetration rate that mirrors our telephone penetration rate. I believe that the Lifeline program can do for broadband service affordability what the Lifeline program has done for telephone service affordability, but it will take a brave Commission to do what is necessary to make a financial commitment to ensure that result.

An underlying theme in our discussion about transforming our fund to support the availability of broadband, is that the concept of universal service evolves over time, based upon the technological changes and expectations of consumers that result from those changes. When the federal Lifeline program began, most consumers had only one personal phone—their home phone. Today, about 30% of consumers have chosen a mobile phone over a home phone, and tens of millions in our nation have access to both a home phone and a mobile phone. Our Order adopts a one phone service per household restriction for low-income families. For those families with two adults, I am concerned that a $9.25 subsidy for service may not stretch far enough for them to each have access to a phone when they need it. I believe it's important that low-income consumers have choices, but given the recent societal expectation that consumers should be able to readily access a phone—whether at home or on the go, I believe asking low-income families with multiple adults to manage with just one phone is inconsistent with the new norm. I also worry what this means in their ability to manage their day-to-day lives and the public safety risks of those members of the family who may not have access to the phone service.

Of course, this Commission just recognized the importance of consumer access to both fixed and mobile networks, as evidenced by our recent commitment to fund both types of networks in our high-cost reform. I appreciate the Chairman's understanding about my concerns, and his willingness to tee up this issue directly in our Further Notice. As such, we are exploring recent proposals in the record about whether a modest increase in the subsidy for low-income families with multiple adults, will allow them to better access the networks. I think this is especially important for very remote areas, such as Tribal Lands and parts of Alaska, where access to a mobile phone may mean the difference between life and death. For this reason, I am concurring in our finding that the benefit of the Lifeline program, is one per household.

There is significant agreement in the record that by using modern database capabilities, we can best reform this program to make it more efficient and effective. My two colleagues and I couldn't agree more, and I want to thank them both for working with me on this issue. I am very pleased that we are setting the goal to address not just duplicates in the next two years, but also eligibility through such database capacity. By doing so, we can better ensure that only qualified consumers are signed up for the subsidy, and we can more effectively confirm eligibility periodically. As a result, two of the new requirements we establish in this Order—reviewing documentation for program eligibility and annual certification of 100 percent of subscribers—will be temporary measures carriers will perform until a database can be used for these functions.

In my initial review of the Order, I had real concerns about the burdens we were placing on both consumers and the carriers with respect to these two new requirements. I understood from the consumer perspective, that documenting their eligibility can be very difficult when they are not initiating their service in person with the carrier. Access to copy and fax machines for low-income consumers, and sometimes even the post office, can be significant barriers, especially because many post offices no longer have copy machines, not to mention the fact that the post office has been closing locations. From the carriers, I also appreciated that they don't want to make the judgment call on who is and isn't qualified for the program. In addition, I understood from both carriers and consumers, that an annual recertification process for 100 percent of Lifeline subscribers is likely to have the unintended effect of de-enrolling qualified consumers.

I can agree with the Chairman that this year, every current Lifeline participant should be checked for continued eligibility in the program through self-certification. Currently, about 65 percent of all Lifeline subscribers are being recertified annually, and checking the other 35 percent makes sense as an initial step in our reform of the program. By permitting consumers to re-certify via text and through individual voice response systems, I believe we have struck a balance for this temporary measure of 100 percent recertification. It is our intent that in 2013, carriers will be able to rely upon a database for recertification, and if the database isn't ready, we will permit carriers to rely upon USAC for recertifying consumers, should they choose to do so. I believe this option not only addresses some carriers' concerns that 100 percent re-certification *every year* is too burdensome, but it also will address the concerns about consumer response rates being too low.

The response rate to USAC last year during the duplicate process, exceeded our expectations, and I expect that consumers may be more likely to respond to an official notification from USAC, as compared to their phone company. Nonetheless, I could not agree more with many of the participants in this proceeding, that the sooner we can make the database capabilities function in this program for both duplicates and eligibility, the better off consumers, carriers, and the Fund will be.

It is critical that we begin the process of educating consumers concerning the changes to the Lifeline program. During the duplicates process last year, thanks to my partnership with Commissioner Copps, the Chairman's support, and the efforts of our Wireline and Consumer Bureaus—this Commission worked diligently with state agencies, the carriers, and consumer groups, to inform and educate the Lifeline subscribers about the duplicates process. We received very few complaints as a result. In fact, we have heard positive feedback from many. The information sent was easy to understand, and available in both English and Spanish. We are planning to replicate that campaign this year with respect to these reforms. I want to thank the Chairman and the staff for their willingness to work with me in getting the word out about the changes to the program, and I encourage all the state agencies, carriers, and consumer groups, to work with us again to ensure that no qualifying low-income consumer is cut off or unable to access the benefits of the program.

I want to take a moment and thank the Joint Board for its significant input into this item. Over the last year and a half, I have been working closely with my state colleagues and the Joint Board staff on this program. The Joint Board's Recommended Decision from November of 2010 was the cornerstone for all the work that has happened in this program in the last year. I believe there are many steps we take today that the states will support, and I look forward to further collaboration with the Joint Board as the reforms are implemented.

I also want to thank Sharon Gillett, and her capable staff, Carol Mattey, Trent Harkrader, Kim Scardino, Lisa Hone, Jonathan Lechter, Soumitra Das, Jamie Susskind, Garnet Hanly, Beau Finley, Rebecca Hirselj, Divya Shenoy, and Rebekah Bina. Their contributions to this Order and Further Notice were remarkable. There was a significant amount of work in the Lifeline program last year, in addition to their work on the Order and Further Notice. Thank you for your dedication to the population served by this program and for your personal sacrifices to complete today's item. I know the implementation stage of the reforms will keep you busy, and I have every confidence that you will continue to serve our citizens in a diligent and thoughtful manner. I also want to thank my Wireline Legal Advisor, Angie Kronenberg, for her significant contributions during the last 18 months with respect to this program, leading up to today's actions, and her commitment to achieving the balanced reforms we adopt today. Mr. Chairman, I also thank you for your leadership in this proceeding.