

Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.” The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

59. In today’s Order, the Commission expands the requirements adopted in the *Form 477 Order* to require wired, terrestrial fixed wireless, and satellite broadband providers to report the percentage of residential broadband connections they have in service in individual Census Tracts. While both large and small entities will be subject to these reporting requirements, the task is comparably easier for smaller entities that provide service to fewer customers and in more concentrated geographic areas, as the reporting procedures are broken down by geographic region and type of service. Few skills beyond the basic accounting skills already required of Form 477 filers, including small entities, are required to comply with the new and modified reporting and recordkeeping requirements adopted in this Order.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

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

61. In the *Data Gathering Notice*, the Commission invited comment on a variety of proposals that would impose further reporting and recordkeeping requirements, including alternatives to

the measures taken in this Order. The Commission sought comment on whether there are any alternatives to the proposals in the order that would also serve the objective of improving broadband data collection, and the Commission invited comment on ways to mitigate the burden that might be imposed on small entities. The Commission sought comment on how the proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable the Commission to determine whether subscribers in those territories have access to broadband services. To analyze the impact on small entities, the Data Gathering Notice asked whether entities maintain the required information in billing or marketing databases, and asked commenters to demonstrate the burden for the entities to collect and report this type of information.

62. The Commission finds that the approach adopted in today’s Order best balances the costs of information collection and the public interest benefits of more detailed information on broadband deployment. As in the *Form 477 Order*, the Commission finds that granting a blanket exemption to small carriers would undercut the benefits of the revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. Additionally, the Commission notes that all Form 477 filers must currently submit, for each state in which they provide service, the percentage of their broadband subscribers that are residential. The Commission concludes that any incremental burden associated with providing this information on the Census Tract basis is outweighed by the utility of the data the Commission will obtain. The Commission thus applies the revised requirement to all broadband service providers, regardless of size.

63. *Report to Congress.* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. 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**.

*Ordering Clauses*

64. Accordingly, *it is ordered* that, pursuant to Sections 1 through 5, 11, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 161, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this Order on Reconsideration, with all attachments, is adopted.

65. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

66. *It is further ordered*, pursuant to sections 1. 103(a) and 1. 427(b) of the Commission’s rules, 47 CFR 1. 103(a), 1. 427(b), that the Commission will publish a document in the **Federal Register** announcing the effective date.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. E8–14874 Filed 7–1–08; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1 and 43**

[WC Docket No. 07–38; FCC 08–89]

**Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscribership**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In the Report and Order (Order), the Federal Communications Commission (Commission) amends the FCC Form 477 data collection in several respects to collect additional data on broadband service subscriptions. The Commission modifies Form 477 to require broadband providers to report the number of broadband connections in service in individual Census Tracts. The Commission adopts a voluntary household self-reporting system, and

will recommend to the Census Bureau that the American Community Survey questionnaire be modified to gather information about broadband availability and subscription in households.

The Commission adopts three additional changes to FCC Form 477. First, the Commission requires providers to report broadband service speed data in conjunction with subscriber counts according to new categories for download and upload speeds. These new speed tiers will better identify services that support advanced applications. Second, the Commission amends reporting requirements for mobile wireless broadband providers to require them to report the number of subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice. Finally, the Commission requires providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information on Form 477.

**DATES:** The amendments to §§ 1.7001 and 43.11 in this document contain information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Alan Feldman, Wireline Competition Bureau, Industry Analysis and Technology Division, (202) 418-0940.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in WC Docket No. 07-38, adopted on March 19, 2008, and released on June 12, 2008. The complete text of this Report and Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at [www.fcc.gov](http://www.fcc.gov). Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at [fcc504@fcc.gov](mailto:fcc504@fcc.gov). The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY-B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563,

TTY (202) 488-5562, or e-mail at [fcc@bcpweb.com](mailto:fcc@bcpweb.com).

### Synopsis of Report and Order

#### Reporting Broadband Connection Information by Census Tract

1. *Wired, Terrestrial Fixed Wireless, and Satellite Broadband—Subscriber Counts.* Currently Form 477 requires covered providers to report the number of broadband connections they provide at the state level. In addition, to measure general service availability, Form 477 requires providers to report the 5-digit ZIP Codes in which they have at least one customer. The Commission agrees with those commenters who argue that collecting actual subscribership numbers in Census Tract areas will significantly improve the quality of the information collected, and that the value of these more detailed, informative reports outweighs the burdens of additional costs, if any, imposed on providers by this requirement.

2. Certain commenters argue that changing the geographic unit of reporting subscribers to 9-digit ZIP Codes would increase the granularity of reported information significantly, enabling policymakers to pinpoint unserved or underserved areas. Commenters opposing 9-digit ZIP Codes argue that reporting broadband subscribership information at that level would be inappropriate, would result in confidentiality problems, or would simply be too expensive. Still other commenters propose the use of geocoded data or of census-based data instead of 9-digit ZIP Codes.

3. The Commission agrees with those commenters who argue that census-based units provide more useful information for the Commission's policy purposes, and will thus require providers to report numbers of subscribers on the Census Tract level. Census-based units are more stable and static than ZIP Codes and thus will enable the Commission to measure change over time more effectively. Additionally, census-based units correspond more consistently to actual locations, are less likely to reveal individual identifiable information about consumers, and can be correlated with valuable demographic data (including race, income, education, and tribal land status), giving policymakers additional tools with which to analyze broadband uptake. By contrast, because ZIP Codes are designed for a different purpose than census-based units, namely to deliver efficiently the nation's mail, ZIP Codes are less useful for the Commission's purposes. In addition, 9-

digit ZIP Codes "do not correspond to any commonly recognized geographic boundaries, such as state or county lines, Congressional districts or service territories."

4. Although some commenters urge us to select the smaller Census Block as the geographic unit for reporting subscriber numbers, the Commission finds that the larger Census Tract is more appropriate for the Commission's purposes. Census Tract numbers provide the beneficial census characteristics listed above, and because a Census Tract is larger than a Census Block, requiring providers to report at the Census Tract level rather than the Census Block level will be less burdensome. For this reason, among others, the Commission therefore disagrees with commenters that reporting by census-based units is overly burdensome compared to the benefits of this reporting. The California Public Utilities Commission comments that the California legislature recently enacted a statute requiring statewide video franchise applicants to report subscribers on a census basis. Commenters argue that this statute has provided California with valuable information from three large providers with minimal burden on the providers.

5. The Commission therefore requires facilities-based providers of wired, terrestrial fixed wireless, and satellite broadband connections to report the number of households that they have in service to households and businesses in each of the Census Tracts in which they operate. The Commission requires these providers to report subscriptions in separate categories based on the speeds of the services. This information will provide us with a highly detailed and reliable account of broadband subscription and deployment nationwide, enabling us to make more informed policy determinations and to support more effectively the efforts of states and others seeking to promote broadband services. Because of the volume of information being reported, the Commission requires providers to supply, in a standardized database format, the number of subscribers in each Census Tract, broken down by technology type and upload and download speed.

6. The Commission disagrees with commenters that reporting by census-based units is, in general, overly burdensome compared to the benefits of this reporting. Nevertheless, the Commission will permit reporting entities to report data in an alternative format under limited circumstances, recognizing that some entities might suffer undue hardship in reporting on a census level. Specifically, upon a

showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of the broadband connection in service at each address, in lieu of reporting subscriber counts by Census Tract.

**7. Terrestrial Mobile Wireless Broadband—Subscriber Counts.** In the current Form 477 data collection process, mobile wireless broadband service providers report the number of connections they provide in particular states, and they report the 5-digit ZIP Codes that best represent their broadband service footprint. Because mobile service subscribers may move within and among broadband service areas, the Commission will continue to require them to report only the number of connections they provide in individual states. For the reasons set forth above, the Commission finds that the benefits of reporting service footprints at the Census Tract level outweighs the costs of the additional reporting. Therefore, the Commission requires mobile wireless broadband service providers to report the Census Tracts that best represent their broadband service footprint for each of the speed tiers in which they offer service. For purposes of Form 477, entities that use unlicensed devices to provide a commercial broadband Internet access service that can be received at any location within a service footprint, *e.g.*, throughout a town, adjoining towns, or portion of a metropolitan area, will continue to report subscriber information in the “terrestrial mobile wireless” category. By contrast, entities that use unlicensed devices to provide broadband Internet access connections to dispersed, fixed end user premises locations are required to report information in the “terrestrial fixed wireless” category of Form 477.

**8. Collecting Additional Information on Broadband Deployment and Adoption.** Comments in the record indicate strong support for creating a self-reporting system, at least as a supplement to other information collection methods. The Commission will design and implement a voluntary system that households may use to report availability and speed of broadband Internet access service at their premises. The voluntary registry will enable households to use the telephone, mail, email, or the Internet to report apparent unavailability of broadband service for their location and information about existing service, such as the type and actual speed of Internet access service they use. The information collected through the voluntary registry

will be shared with public-private partnerships and with the Telecommunications Program of the United States Department of Agriculture (USDA) Rural Development Agency. Furthermore, in order to obtain data on broadband services at an even more granular level than the information collected by the changes that the Commission adopts in this Order, the Commission will recommend to the Census Bureau that the following question be added to the American Community Survey and the Puerto Rico Community Survey:

“What is the main method household members use to access the Internet from home?”

- (1) No members of this household access the Internet from home.
- (2) A regular ‘dial-up’ telephone line.
- (3) DSL (Digital Subscriber Line).
- (4) A cable modem.
- (5) A fiber optic line.
- (6) A wireless or satellite connection.
- (7) Some other means.”

#### New Broadband Connection Speed Categories

9. Form 477 currently gathers information within “speed tiers” in which providers categorize the maximum speeds of connections offered to customers. These tiers includes connections with information transfer rates that exceed 200 kbps in both directions and are less than 2.5 mbps in the faster direction. The next tier includes connections with information transfer rates that exceed 200 kbps in both directions and are greater than or equal to 2.5 mbps and less than 10.0 mbps in the faster direction. As many commenters noted, the range of information transfer capacities included in the current lowest tier of 200 kbps to 2.5 mbps captures a wide variety of services, ranging from services capable of transmitting real time video to simple always-on connections not suitable for more than basic email or web browsing activities. The Commission finds that requiring providers to report data in more detailed speed tiers will better identify services that support advanced applications, creating distinctions that reflect different capacities for transmitting high quality video and similar high bandwidth communications. The Commission also finds that, as technologies and services evolve, upload speeds are an increasingly significant aspect of broadband services, and increased granularity in reporting both download and upload speed data will assist us in understanding the broadband services market.

10. Accordingly, in order to gather more detailed and therefore useful information about subscription to broadband services, the Commission revises Form 477 to establish an increased number of transfer speed categories, applicable to both download and upload service speeds. Specifically, the reporting tiers applicable to the reporting of both download and upload transfer rates under the new Form 477 collection are: (1) Greater than 200 kbps but less than 768 kbps; (2) equal to or greater than 768 kbps but less than 1.5 mbps; (3) equal to or greater than 1.5 mbps but less than 3.0 mbps; (4) equal to or greater than 3.0 mbps but less than 6.0 mbps; (5) equal to or greater than 6.0 mbps but less than 10.0 mbps; (6) equal to or greater than 10.0 mbps but less than 25.0 mbps; (7) equal to or greater than 25.0 mbps but less than 100.0 mbps; and (8) equal to or greater than 100 mbps. The Commission finds it appropriate to continue to evaluate broadband deployment by monitoring the migration of customers and services to higher speed tiers by continuing to collect information beginning at the 200 kbps threshold that is appropriately considered “first generation.” Additionally, the Commission will retain the requirement that providers report connections with download transfer rates above 200 kbps and upload speeds of less than or equal to 200 kbps, because upload services in this category continue to be a prevalent offering in the broadband services market. Filers will report the number of subscribers for each type of technology of service they offer, in each combination of download and upload speed categories, within each Census Tract in which the providers have subscribers.

11. The action the Commission takes in this Order will help ensure that the Commission gathers the data it requires in order to carry out its obligations. While these changes may increase reporting requirements for some service providers, and require new methods for comparison of new data to old data, the Commission agrees with commenters who note that such changes will improve the Commission’s understanding of the market for broadband services. Through these adjustments, the Commission continues and extend the Commission’s efforts to collect data to assess broadband deployment based on tiered speeds. It is the Commission’s intention to revisit these speed thresholds every two years to assess whether advances in technology warrant further refinements.

Other Reporting Requirements for Mobile Wireless Broadband Providers

12. *Distinguishing Subscribers by Service Usage.* The Commission notes that providers of mobile wireless broadband service are currently required to “report the number of end users whose mobile device, such as wireless modem laptop cards, smartphones, or handsets, are capable of sending or receiving data at speeds in excess of 200 kbps.” This information is valuable in that it represents, in the broadest sense, those mobile wireless users with the capacity to access broadband services. Commenters note that tracking those users with a month-to-month or longer plan for broadband data transfer produces more accurate information about mobile broadband usage than simply tracking users who are capable of such use. The Commission agrees with these commenters and concludes that the benefits of gathering separate information about mobile broadband subscriptions that contain a data plan, including the increased ability of the Commission to understand the level of mobile wireless usage, outweigh any additional reporting costs. The Commission therefore revises Form 477 to add a second reporting category in which mobile service providers will report the number of subscribers whose device and subscription permit them to access the lawful Internet content of their choice. When counting such subscribers, the Commission directs providers to exclude subscribers whose choice of content is restricted to only customized-for-mobile content, and to exclude subscribers whose subscription does not include, either in a bundle or as a feature added to a voice subscription, a data plan providing the ability to transfer, on a monthly basis, either a specified or an unlimited amount of data to and from Internet sites of the subscriber’s choice.

13. *Residential Subscribers.* The Commission modifies the Form 477 instructions for counting certain mobile wireless broadband subscribers as residential subscribers. Commenters note that many individuals who use a mobile device for business purposes also use it for personal purposes, and that employers variously underwrite employees’ business-related use of mobile wireless services. Commenters also note that mobile wireless providers may differ in their marketing strategies and how they distinguish market segments. Nevertheless, the Commission wishes to obtain greater Form 477 reporting consistency and accuracy. Therefore, the Commission directs

mobile wireless broadband providers to report as residential subscriptions those subscriptions that are not billed to a corporate account, to a non-corporate business customer account, or to a government or institutional account.

Reporting Requirements for Interconnected VoIP Service Providers

14. Only some providers of interconnected Voice over Internet Protocol (VoIP) services are required to report information on Form 477. Interconnected VoIP service subscribers represent an important and rapidly growing part of the U.S. voice service market, and interconnected VoIP services are becoming increasingly competitive with other forms of local telephone service. Under the Commission’s current reporting rules, end-user subscriptions to interconnected VoIP services are substantially underreported, which distorts the Commission’s view of the extent of interconnected VoIP service deployment and uptake, and potentially distorts the Commission’s picture of the U.S. voice service market. The Commission’s predictive judgment is that, if the Commission did nothing to update its reporting rules, these distortions would continue to grow.

15. The Commission concludes that the Commission has the authority under Title I of the Act to impose reporting obligations on providers of interconnected VoIP service, and are justified in exercising this authority. Ancillary jurisdiction may be employed, in the Commission’s discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is “reasonably ancillary to the effective performance of [its] various responsibilities.” Both predicates for ancillary jurisdiction are satisfied here.

16. First, as the Commission concluded in previous orders, interconnected VoIP services fall within the subject matter jurisdiction granted to the Commission in the Act. Second, the Commission’s analysis requires us to evaluate whether imposing reporting obligations is reasonably ancillary to the effective performance of the Commission’s various responsibilities. Based on the record in this matter, the Commission finds that requiring interconnected VoIP service providers to report the number of subscribers they serve (both end user and for resale), the percentage of these who are residential, and whether the interconnected VoIP service is provided over a broadband connection provided by the filer or by the filer’s affiliate is reasonably

ancillary to the effective performance of the Commission’s various responsibilities under the Act. The Commission has a responsibility under section 706 of the Telecommunications Act of 1996 to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability. Furthermore, the Act specifically authorizes the Commission to require annual reports from all carriers subject to the Act, as well as to require the production of other information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

17. The Commission’s primary goal underlying the reporting requirements is the identification of unserved and underserved areas with respect to advanced telecommunications capability. The Commission’s ability to perform its functions related to this objective depends upon its having adequate information about deployment and uptake of advanced telecommunications capability. As explained above, the Commission does not believe it is possible to obtain an accurate view of the U.S. voice service market without gathering data about interconnected VoIP service subscribers. Thus, the Commission’s continued ability to exercise its responsibilities—such as identifying unserved and underserved markets—depends in part on requiring interconnected VoIP providers to report the number of end-user and resale subscribers they serve, the percentage of these who are residential, and whether the interconnected VoIP service is used over a broadband connection provided by the filer or by the filer’s affiliate. Thus, the Commission concludes that imposing these reporting obligations is reasonably ancillary to the effective performance of its responsibilities.

18. Commenters noted that interconnected VoIP services are becoming increasingly competitive with local telephone service, and that it is appropriate to collect information on subscriptions, including the number of connections and the percentage of those connections that are residential, in order to determine the extent of competition posed by the services. The Commission concludes that gathering the number of end-user and resale subscribers to interconnected VoIP service and the percentage of those subscribers who are residential would provide valuable information that would enable the Commission to track deployment and adoption of interconnected VoIP service across the nation. Accordingly, the Commission modifies Form 477 to

require providers of interconnected VoIP service to report information about the number of end-user and resale subscribers they have in individual states, and the percentage of the subscribers who purchase the provider's residential grade service plan. Additionally, to collect useful information as set forth in the Data Gathering Notice, the Commission modifies Form 477 to require providers of interconnected VoIP service to report a list of 5-digit ZIP Codes within each state in which they have at least one subscriber. This requirement achieves regulatory parity across technologies that offer voice-grade equivalent lines or channels.

19. The Commission also concludes that gathering information regarding the number of subscribers who receive broadband service in conjunction with interconnected VoIP service, and the share of interconnected VoIP service subscribers who can use the service over any broadband connection, would provide valuable information on the deployment of interconnected VoIP service. The Commission therefore requires interconnected VoIP providers to report information about the type(s) of broadband connections, if any, they or their affiliates provide in conjunction with interconnected VoIP service, and to report whether the interconnected VoIP service must be used over a single predetermined broadband connection or can be used over any broadband connection.

#### Other Matters

20. *Exemptions for Small and Medium-Size Operators.* The changes to the Commission's Form 477 information collection will significantly increase the Commission's ability to carry out its statutory duties under section 706 of the Communications Act to monitor broadband deployment. The new information gathered by Form 477 will enable the Commission, the industry, and other parties to realize many benefits, including forming a more detailed understanding of the scope of broadband adoption, connecting data on broadband services to demographic data collected by the Census Bureau, and pinpointing areas that are currently unserved or underserved. Some commenters suggest that small and medium sized carriers should be exempt from the modified reporting requirements that the Commission adopts in this Order. The Commission disagrees. Creating a blanket exemption for small and medium sized carriers would undercut the benefits of the Commission's revised information collection by depriving the Commission

and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. However, in order to ease the process of this transition in reporting methodology, upon a showing of significant hardship, reporting entities may report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address, in lieu of producing and reporting subscribership counts by Census Tract.

#### Paperwork Reduction Act of 1995 Analysis

21. This Report and Order contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### Legal Basis

22. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1 through 5, 10, 11, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 160, 161, 201 through 205, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

#### Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the April 2007 Data Gathering Notice. The Commission sought written public comment on the proposals in the Data Gathering Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

24. In today's Report and Order (Order), the Commission adopts certain changes to Form 477 to collect additional, improved data on broadband availability and use. The Commission amends the FCC Form 477 data collection in several respects to collect additional data on broadband service subscriptions. These changes will greatly improve the ability of the Commission to understand the extent of broadband deployment, and will enable the Commission to continue to develop and maintain appropriate broadband policies, in particular to carry out its obligation under section 706 of the Telecommunications Act of 1996 to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."

25. These changes include requiring certain reporting entities to report broadband service subscribership counts within Census Tracts, and to report Census Tract information concerning the availability of their broadband services. The Order also changes the speed tiers under which broadband connections are reported, establishes new terminology for levels of broadband connection speed, and changes Form 477 to collect certain subscribership information from wireless and interconnected VoIP service providers. These new reporting requirements will facilitate the Commission's understanding of the extent of broadband deployment in the United States, particularly deployment in unserved and underserved areas

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

26. In this section, the Commission responds to comments filed in response to the IRFA. The Commission recognizes that many businesses, including small rural ILECs, will need to modify their practices to collect, maintain, and report additional data at the Census Tract level. The Commission is not persuaded by comments in the record arguing that the costs of complying with the increased reporting requirements in today's Order outweighs the benefits of collecting additional data, and the Commission is persuaded by comments indicating that it ought to collect information at a more granular level, and in particular at the level of Census Tracts. Nevertheless, in the Order, the Commission provides an express exception to this rule of which small businesses can avail themselves. Specifically, upon a showing of

significant hardship, reporting entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of the broadband connection in service at each address, in lieu of reporting subscriber counts by technology, speed, and Census Tract. Comments in the record also contend that the Data Gathering Notice failed to include a complete estimate of the costs and burdens of compliance as a general matter. However, the record developed in this proceeding, in response to the Data Gathering Notice, demonstrates that the costs would not be burdensome. More importantly, other than conclusory assertions that the data collection as proposed in the Data Collection Order would be burdensome, the record includes no convincing evidence of any specific, actual burden, such as employee hours or monetary costs.

#### Description and Estimate of the Number of Small Entities To Which the Proposed Rules May Apply

27. 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 rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 Small Business Administration (SBA).

#### Wireline Carriers and Service Providers

28. *Incumbent Local Exchange Carriers (ILECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are

small businesses that may be affected by its action.

29. *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. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 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, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 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 its action.

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

31. *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. According to Commission data, 184 carriers have reported that they are engaged in the provision of local resale

services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by its action.

32. *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. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by its action.

33. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services 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. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by its action.

34. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by its action.

35. *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 for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by its action.

36. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by its action.

37. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,647,941 or fewer small entity 800

subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

#### Wireless Carriers and Service Providers

38. 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.

39. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. The Commission estimates that 221 of these are small, under the SBA small business size standard. Thus, under this category and size standard, about half of firms can be considered small.

40. *Common Carrier Paging.* The SBA has developed a small business size

standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees.

Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by its 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. 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. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

41. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

42. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to

Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

43. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. 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. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

44. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity

that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

45. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

46. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for "small" and "very small" businesses for

purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

47. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very 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, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service 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. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or

very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

48. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” as 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. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

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

50. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates

that almost all of them qualify as small under the SBA small business size standard.

51. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of its evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

52. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other

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

53. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

54. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by its action.

55. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”), and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”), to transmit video programming and provide broadband services to residential subscribers.

These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

56. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

57. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees,

and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

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

59. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

60. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and

applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

61. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

#### Satellite Service Providers

62. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$13.5 million. The most current Census Bureau data, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both prior categories, such a business was considered small if it had, as now, \$13.5 million or less in average annual receipts.

63. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this

total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

64. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.” For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by its action.

#### Cable and OVS Operators

65. In 2007, the SBA recognized new census categories for small cable entities. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, the Commission considers certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires it to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers will not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

66. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver

visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.” The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small.

67. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

68. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore it is unable to estimate more accurately the number of cable

system operators that would qualify as small under this size standard.

69. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

#### Electric Power Generation, Transmission and Distribution

70. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.” The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.” According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric

output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

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

71. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

72. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 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. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

#### Other Internet-Related Entities

73. *Web Search Portals.* The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users." The SBA has developed a small business size

standard for this category; that size standard is \$6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

74. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily \* \* \* provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

75. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

76. *Internet Publishing and Broadcasting.* "This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast." The SBA has developed a small business size standard for this census category; that size standard is 500 or

fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms small entities that may be affected by its action.

#### Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

77. Today's Report and Order requires broadband providers to report the number of broadband connections they have in service in individual Census Tracts; it requires providers to report subscriber counts under alternative speed tiers; it requires mobile wireless broadband providers to report the number of subscribers whose data plans allow them to browse the Internet and access the Internet content of their choice; and it requires providers of interconnected Voice over Internet Protocol (interconnected VoIP) service to report subscribership information. While both large and small entities will be subject to these reporting requirements, the task is comparably easier for smaller entities that provide service to fewer customers and in more concentrated geographic areas, as the reporting procedures are broken down by geographic region and type of service. Few skills beyond the basic accounting skills already required of Form 477 filers, including small entities, are required to comply with the new and modified reporting and recordkeeping requirements; specifically, they will need to modify their billing systems in order to accommodate the reporting of information by Census Tract.

#### Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

79. In the Data Gathering Notice, the Commission invited comment on a variety of proposals that would impose further reporting and recordkeeping requirements, including alternatives to the measures taken in this Order. The Commission sought comment on whether there are any alternatives not discussed that would also serve the objective of improving broadband data collection, and it invited comment on ways to mitigate the burden that might be imposed on small entities. The Commission sought comment on how the proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable it to determine whether subscribers in those territories have access to broadband services. To analyze the impact on small entities, the Data Gathering Notice asked whether entities maintain the required information in billing or marketing databases, and asked commenters to demonstrate the burden for the entities to collect and report this type of information.

80. The Commission finds that the approach adopted in today's Order best balances the costs of information collection and the public interest benefits of more detailed information on broadband deployment. Collecting subscriber count information at the Census Tract level, as compared to collecting information at the 5-digit or 9-digit ZIP Code level or some other unit, results in a greatly improved understanding of the market for broadband services while imposing a minimum burden on reporting entities. While additional information collected by other methods, such as public-private partnerships, self-reporting, and the U.S. Census, can supplement required reporting by service providers, these methods have many limitations and are not sufficient by themselves, and cannot replace existing Form 477 reported information.

81. The Commission offers an alternative for businesses for which the Census Tract reporting poses a significant hardship. Upon a showing of significant hardship, entities will be permitted to report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address, in lieu of reporting subscriber counts by technology, speed, and Census Tract. This alternative will merely require an entity to report the data it already has or ought to have, and the Commission will use its own resources to analyze the data.

82. While the Commission recognizes that service providers will still incur

implementation and recurring costs for these modified reporting requirements, it concludes that the benefits to the public of gathering more complete information on the extent of broadband deployment between the economic burden imposed on these providers. To the extent that a reporting entity would suffer a significant hardship, the Commission has created an alternative reporting requirement.

83. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. 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**.

#### Ordering Clauses

84. Accordingly, *it is ordered* that, pursuant to sections 1 through 5, 11, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 155, 161, 201 through 205, 211, 215, 218 through 220, 251 through 271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this Further Notice, with all attachments, *is adopted*.

85. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. The amendments to §§ 1. 7001 and 43. 11 in this document contain information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

#### List of Subjects in 47 CFR Parts 1 and 43

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

#### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 43 as follows:

## PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Section 1. 7001 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

#### § 1. 7001 Scope and content of filed reports.

(a) \* \* \*

(2) *Own facilities.* Lines and wireless channels the entity actually owns and facilities that it obtained the right to use from other entities as dark fiber or satellite transponder capacity.

\* \* \* \* \*

(b) All commercial and government-controlled entities, including but not limited to common carriers and their affiliates (as defined in 47 U.S.C. 153 (1)), cable television companies, fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, that are facilities-based providers, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

(c) Respondents identified in paragraph (b) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

\* \* \* \* \*

## PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

■ 3. The authority citation for part 43 continues to read as follows:

**Authority:** 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

■ 4. Section 43. 11 is amended by revising paragraphs (a), (b), and (c) to read as follows:

#### § 43. 11 Reports of Local Exchange Competition Data.

(a) All common carriers and their affiliates (as defined in 47 U.S.C. 153(1)) providing telephone exchange or exchange access service (as defined in 47 U.S.C. 153(16) and (47)), commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in § 20.15(b)(1) of this chapter), and Interconnected Voice over IP service

providers (as defined in § 9.3 of this chapter), shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

(b) Respondents identified in paragraph (a) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

(c) Respondents may make requests for Commission non-disclosure of provider-specific data contained in the Form 477 under § 0.459 of this chapter by so indicating on the Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Wireline Competition Bureau may release provider-specific information to a state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information.

\* \* \* \* \*

[FR Doc. E8-14873 Filed 7-1-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 32, 36 and 54

[WC Docket No. 05-337; CC Docket No. 96-45; FCC 08-122]

### High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Order.

**SUMMARY:** In this Order, the Commission takes action to rein in the explosive growth in high-cost universal service support disbursements. As recommended by the Federal-State Joint Board on Universal Service, the Commission adopts an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. Specifically, as of the effective date of this Order, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. The Commission also adopts two limited exceptions from the specific application of the interim cap. The interim cap will remain in

place only until the Commission adopts comprehensive high-cost universal service reform. In addition, the Commission resolves most of the petitions for ETC designation currently pending before the Commission.

**DATES:** This Order will be effective August 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ted Burmeister, Telecommunications Access Policy Division, Wireline Competition Bureau, 202-418-7389 or TTY: 202-418-0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order in WC Docket No. 05-337 and CC Docket No. 96-45, adopted on April 29, 2008, and released on May 1, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 800-378-3160 or 202-863-2893, facsimile 202-863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

*Final Paperwork Reduction Act of 1995 Analysis:* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995). It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." Small Business Paperwork Relief Act of 2002, Public Law 107-198, 116 Stat. 729 (2002); 44 U.S.C. 3506(c)(4).

In this present document, we have assessed the effects of demonstrating compliance with the exception to the interim cap, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns,

including those with fewer than 25 employees. First, we note that compliance with the exception is voluntary—small business concerns are not required to comply with the information collection. In addition, compliance with the exception will be elected by carriers on a study area by study area basis. Carriers need only provide additional information on the study areas for which they elect to rely on the exception to the interim cap.

### Synopsis of the Order

#### Introduction

1. In this Order, we take action to rein in the explosive growth in high-cost universal service support disbursements. As recommended by the Federal-State Joint Board on Universal Service (Joint Board), we adopt an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (*Recommended Decision*). Specifically, as of the effective date of this Order, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. We also adopt two limited exceptions from the specific application of the interim cap. First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier (LEC). Second, we adopt a limited exception for competitive ETCs serving tribal lands or Alaska Native regions. The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform. The Commission plans to move forward on adopting comprehensive reform measures in an expeditious manner. The Commission commits to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the pending Commission Notices regarding comprehensive reform. Finally, we resolve most of the petitions for ETC designation currently pending before the Commission.

#### Background

2. For the past several years, the Joint Board has been exploring recommending modifications to the