

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Lawrence E. Mack, (202) 622-4940; concerning the submissions of comments and requests for hearing, Fummi Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background and Explanation of Provisions**

This document contains proposed amendments to 26 CFR part 301 under section 7216 to provide modified rules relating to the ability of a tax return preparer located within the United States to disclose a taxpayer's social security number ("SSN") constituting tax return information with the taxpayer's consent to a tax return preparer located outside of the United States. Simultaneously with the publication of this notice of proposed rulemaking, temporary regulations are published in the Rules and Regulations section of this issue of the **Federal Register** amending 26 CFR part 301. Those regulations provide a limited exception to the general rule prohibiting a return preparer from obtaining a taxpayer's consent to disclose the taxpayer's SSN to a tax return preparer located outside of the United States. The limited exception provides that a tax return preparer within the United States may disclose an SSN with the taxpayer's consent to a tax return preparer located outside of the United States when both the tax return preparer located within the United States and the tax return preparer located outside of the United States maintain an "adequate data protection safeguard" and the tax return preparer located within the United States verifies the maintenance of the adequate data protection safeguards in the request for the taxpayer's consent. Those regulations also clarify that the general prohibition regarding disclosure of SSNs applies only to those taxpayers filing a return in the Form 1040 Series, for example, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ. The text of those regulations also serves as the text of these regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the

regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules, how they can be made easier to understand, and the administrability of the rules in the proposed regulations, as well as the accompanying guidance published in Revenue Procedure 2008-35. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 6, 2008, beginning at 10 a.m. in the NYU Room (room 2615) of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments on September 30, 2008 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 15, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Lawrence E. Mack, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Par. 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 301.7216-3 is amended by revising paragraph (b)(4) to read as follows:

§ 301.7216-3 Disclosure or use permitted only with the taxpayer's consent.

* * * * *

(b) * * *

(4) [The text of proposed § 301.7216-3(b)(4) is the same as the text for § 301.7216-3T(b)(4), published elsewhere in this issue of the **Federal Register**.]

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Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8-15047 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: Proposed rule.

SUMMARY: In the Further Notice of Proposed Rulemaking (FNPRM), the Federal Communications Commission (Commission) seeks comment on modifications to the FCC Form 477 data collection 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.”

DATES: Comments on Broadband Availability Mapping are due on or before July 17, 2008. Reply comments on Broadband Availability Mapping are due on or before August 1, 2008. Comments on all other issues are due on or before August 1, 2008. Reply comments on all other issues are due on or before September 2, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–38, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Parties choosing to file by paper must file an original and four copies of each filing in WC Docket No. 07–38. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's mail contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters,

CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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 Further Notice of Proposed Rulemaking in WC Docket No. 07–38, adopted on March 19, 2008, and released on June 12, 2008. The complete text of this Further Notice of Proposed Rulemaking 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. 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. 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.

Synopsis of Further Notice of Proposed Rulemaking

1. In this Further Notice of Proposed Rulemaking (Further Notice), the Commission seeks comment on modifications to the FCC Form 477 data collection to collect additional data on broadband service subscriptions. These proposed changes 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.”

2. In particular, the Commission seeks comment on developing a nationwide broadband availability mapping program. The Commission seeks comment on ways in which it might effectively capture information about actual, delivered speeds of broadband

Internet access services, and about prices of broadband services. In addition, the Commission seeks comment on whether to require Form 477 filers to report the number of voice telephone service connections at the ZIP Code or Census Tract level. Finally, the Commission seeks comment on methodologies for consumer broadband surveys, and on methods for preserving confidentiality when sharing the information collected on Form 477.

Reporting Number of Lines and Channels

3. Currently, local exchange carriers that file Form 477 are required to report the total number of voice-grade equivalent lines and wireless channels provided to end users. This information is provided on a state-by-state basis. In this Further Notice, the Commission seeks comment on whether to require Form 477 filers to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level. This increased granularity of data would enable the Commission to better assess adoption of particular technologies and competition using particular technologies in localized areas. The Commission seeks comment on the benefits and burdens associated with this additional reporting requirement.

Broadband Availability Mapping

4. In the Data Gathering Notice, the Commission sought comment on methods to better use the data collected by Form 477. The Commission acknowledged the success of the ConnectKentucky initiative and its interactive mapping program. The Commission notes that the ConnectKentucky program, along with other efforts at the state level, has facilitated identification of areas without broadband service, and that this identification has resulted in public and private resources being focused to provide service to unserved areas. In order to provide an information resource that will facilitate similar focus nationwide, the Commission seeks comment on the adoption of a national broadband mapping program with the objective of creating a highly detailed map of broadband availability nationwide. The Commission seeks comment on ways such a program can provide useful information to other broadband initiatives undertaken by federal and state agencies and public-private partnerships, such as ConnectKentucky. The Commission seeks comment on whether and to what extent it might work with the

Department of Agriculture's Rural Utilities Service in developing and using this mapping program, so as to combine the expertise of the Commission and its staff with that of the RUS in supporting rural infrastructure deployment.

5. The Commission tentatively concludes that the Commission should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available. The Commission seeks comment on this conclusion, and on what standardized formats could be used to collect the information. The Commission seeks comment on whether and how a nationwide broadband mapping program can incorporate the data collected on Form 477, including information on broadband service subscriptions by Census Tract and by speed tier. The Commission also seeks comment on whether there are other sources of data it should collect to improve the output of the broadband service availability mapping program. The Commission seeks comment on how to maintain the confidentiality of broadband service information while still providing a rich resource for use by other federal agencies, states, localities, and public-private partnerships in focusing resources on expanding broadband availability in a manner, similar to the focusing of resources enabled by the ConnectKentucky project. The Commission will apply an expedited comment cycle on this issue, and it intends to issue a responsive Order within 4 months.

Delivered Speed Information Gathering

6. In the Data Gathering Notice the Commission sought comment on whether to require reporting of actual broadband connection speeds experienced by customers rather than the theoretical maximum that a given network can support or the particular service configuration allows. The record indicates that factors beyond the control of service providers may compromise the ability of service providers to report actual speeds experienced by consumers. Also, comments in the record point to the existence of other methods of collecting this information. In this Further Notice, the Commission seeks comment on how it might require service providers to report this information, and any alternative means, in addition to or other than requiring such service provider reporting, for effectively capturing meaningful information about actual speeds of Internet access services experienced by consumers.

Broadband Price Information

7. In the Data Gathering Notice, the Commission sought comment on whether and how it could collect price information for broadband services. Among other questions, the Commission asked how to compare price information in introductory offers and bundled services. In the record in this proceeding, commenters note that such price information is helpful in understanding broadband uptake, particularly when viewed across regions and in comparison to demographic information. Comments from state entities also emphasized the value of gathering price information, particularly for low-cost broadband services, to assist the state entities with ensuring availability of broadband service and monitoring competition. Commenters note, however, that price information is complex due to promotions, bundling discounts, contract terms, multi-part tariffs, and other contextual information, and that price fluctuations can be frequent and have the potential to render data gathering meaningless or even misleading. Some commenters suggest collecting pricing information on a price-per-bit basis to simplify reporting and comparison. Others question the need for or utility of collecting this information on Form 477 at all and note that other entities are already gathering pricing information on broadband services. One commenter suggests that any meaningful standards or comparisons need to somehow account for non-speed differences in service features. Another states that the lack of low-cost, standalone broadband service itself may be indicative of a lack of competition.

8. The Commission seeks to supplement and enrich the record on broadband price information. The Commission seeks comment on requiring providers to report, for each state or each Census Tract in which they offer service, the monthly price the provider charges for standalone broadband service in each of the speed tiers used for Form 477 reporting, not including any temporary promotional price discounts or any discounts for bundled services. If a provider offers multiple broadband services with different service characteristics within a speed tier (e.g., services that include either a static or a dynamic IP address), or charges different prices for a service for customers in different portions of a state or Census Tract, the Commission seeks comment on whether it should require the provider to report the lowest and the highest prices available to consumers within the state or Census

Tract, in order to identify the range of prices that a consumer may have to pay. In the alternative, the Commission seeks comment on whether it should require providers to report the lowest price for standalone service available to consumers within the state or Census Tract within each speed tier. If a provider has only national pricing for a service, the Commission seeks comment on permitting the provider to report the monthly national price for such a service, in lieu of individual state reports. The Commission also seeks comment on whether there are any methods to derive a standalone price for broadband service when only bundled services are offered by a provider. Specifically, if a provider does not offer standalone service, but does offer bundled service, the Commission seeks comment on whether it should require the provider to report the total monthly price of the least expensive bundle of services that includes the broadband service. The Commission seeks comment on whether it should also require providers to report the Average Revenue Per User, or ARPU, for their services. The Commission seeks comment on any additional metrics or standards that it may adopt to collect meaningful comparative broadband price information in the presence of widespread service bundling, promotional pricing, flux and variability in broadband service prices, and the variety of optional features associated with services. And finally, the Commission seeks comment on whether and in what form the Commission should use the reported service price information.

Preserving Confidentiality

9. In the Further Notice above, the Commission seeks comment on a national broadband availability mapping program, and on how it can provide information gathered by that program to other broadband initiatives undertaken by federal and state agencies and by public-private partnerships. Comments in the record indicate concern for the confidentiality of reported data. The Commission seeks comment on ways in which it can preserve confidentiality when sharing the information collected on Form 477, the voluntary registry, and other sources with agencies such as the Department of Agriculture's Rural Utilities Service and with public-private partnerships such as ConnectKentucky and similar ventures, for example by sharing the data in a less granular or aggregated form than the level at which it is collected.

Broadband Customer Surveys

10. The Commission seeks comment on whether it should conduct and publish periodic surveys of broadband customers to obtain information about the price, technology, and speed of their connections and to obtain information about the applications and services that they use over the connections. The Commission asks commenters to provide information on the appropriate methodology for conducting such surveys.

Ex Parte Presentations

11. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules as well.

Comment Filing Procedures

12. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 07–38. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's rulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also

submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

13. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at FCC@BCPIWEB.COM. The pleadings will also be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) accessible on the Commission's Web site, <http://www.fcc.gov/cgb/ecfs>.

14. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer &

Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

15. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission. The Commission also strongly encourages that parties track the organization set forth in this Further Notice in order to facilitate its internal review process.

16. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 CFR 0.461; 5 U.S.C. 552. The Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

Paperwork Reduction Act of 1995 Analysis

17. The Further Notice of Proposed Rulemaking 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. A copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to the Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to PRA@fcc.gov, and to Nicholas Fraser, Office of Management and Budget (OMB), via e-mail to

Nicholas_A_Fraser@omb.eop.gov or via fax at 202-395-5167.

18. 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

19. The legal basis for any action that may be taken pursuant to the FNPRM 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.

Initial Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's Further Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

21. In the Further Notice, In the Further Notice, the Commission considers how to best implement certain reporting requirements and whether there are additional reporting requirements it should adopt to improve the ability of the Commission to understand the extent of deployment of broadband and related services. Specifically, the Commission seeks comment on whether to require local exchanges carriers and interconnected VoIP service providers to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level. The Commission seeks comment on whether to create a broadband mapping program,

and on information that can be collected and included in the program. The Commission also seeks comment on whether it should require reporting of information on price of broadband services, and information on actual, delivered broadband speeds, and the Commission seeks comment on standards and methodologies appropriate for the collection of this data. Finally, the Commission seeks general comments on ways to maintain the privacy of the currently reported data as well as the new data collections proposed in the Further Notice, and on appropriate methodologies for the creation of broadband consumer surveys to acquire additional information. For each of these issues, the Commission also seeks comment on the burdens, including those placed on small carriers, associated with corresponding Commission rules related to each issue and whether there are alternative rules that might lessen any burden.

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

22. 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

23. *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.

24. *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.

25. 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.

26. *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.

27. *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.

28. *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.

29. *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.

30. *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.

31. *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.

32. *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

33. 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.

34. *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.

35. *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.

36. *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.

37. *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.

38. *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.

39. *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.

40. *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.

41. *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.

42. 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.

43. 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” 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. 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.

44. 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.

45. 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.

46. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “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.

47. 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.

48. *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.

49. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. 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.

50. *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.

51. 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.

52. 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.

53. 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.

54. *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.

55. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24

GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. 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.

56. *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

57. *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.

58. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." 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.

59. 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

60. 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.

61. *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.

62. *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.

63. *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.

64. *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, DC, 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

65. *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

66. 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.

67. *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

68. *Web Search Portals.* The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, 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.

69. *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.

70. *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 e-mail, 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.

71. *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

72. In the Further Notice, the Commission proposes four additional or modified information collections that would impose further reporting and recordkeeping requirements on current Form 477 filers, including small entities. Specifically, the Further Notice invites comment on whether and how Form 477 filers should (1) report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract, (2) report information to build a map of broadband service availability, (3) report information on broadband service pricing, and (4) report information on actual, delivered speeds of broadband services. The Commission invites comments on the merits and methodologies of such information collections to include suggestions and discussions of other alternatives not specifically discussed in the Further Notice that would meet the objectives of the Further Notice but would impose lesser burdens on smaller entities.

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

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

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

standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

75. As noted above, the Further Notice invites comment on whether and how current Form 477 filers should (1) report subscriber counts for voice-grade lines and channels at the 5-Digit Zip Code or Census Tract level, (2) report information to build a map of broadband service availability, (3) report information on broadband service pricing, and (4) report information on actual, delivered speeds of broadband services. The Further Notice seeks comment on possible methods for reporting the proposed information collections, as well as suggestions of methods to maintain and report the information that achieve the purposes of the Further Notice while minimizing the burden on reporting entities, including small entities. This information will assist the Commission in determining whether these various proposed information collections would impose a significant economic impact on small entities.

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

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

77. None.

Ordering Clauses

78. 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*.

79. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

80. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415,

1.419, interested parties may file comments on the Broadband Availability Mapping portion of this Further Notice of Proposed Rulemaking on or before July 17, 2008, and reply comments on or before August 1, 2008, and interested parties may file comments on the other portions of this Further Notice of Proposed Rulemaking on or before August 1, 2008, and reply comments on or before September 2, 2008.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 531, 533, 534, 536 and 537

[Docket No. NHTSA-2008-0060]

Notice of Availability of a Draft Environmental Impact Statement (DEIS) for New Corporate Average Fuel Economy Standards; Notice of Public Hearing

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of availability of a draft environmental impact statement (DEIS); notice of public hearing.

SUMMARY: NHTSA has prepared a Draft Environmental Impact Statement (DEIS) to disclose and analyze the potential environmental impacts of proposed Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2011-2015 passenger cars and light trucks, which NHTSA recently proposed pursuant to the Energy Independence and Security Act of 2007, and a reasonable range of alternative standards. To inform decisionmakers and the public, the DEIS compares the potential environmental impacts of the proposed standards and alternative standards reflecting a full range of stringencies, and it analyzes direct, indirect, and cumulative impacts in proportion to their significance. The DEIS provides a detailed analysis of potential impacts on energy resources, air quality, and climate. The DEIS uses climate modeling and NHTSA's own computer model to provide quantitative estimates of potential impacts on air quality, carbon dioxide (CO₂) emissions, global mean surface temperature,