

| Source of flooding and location  | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |
|--|---|
| Approximately 375 feet downstream of Tusculum Boulevard .....  | *1,424  |
| Approximately 750 feet upstream of Viking View Estates Road .....  | *1,458  |
| <b>Richland Creek:</b><br>Approximately 1,550 feet downstream of East McKee Street .....                             | *1,431  |
| Approximately 2,150 feet upstream of East Church Street .....  | *1,486  |
| <b>Maps available for inspection</b> at the Greeneville Town Hall, 200 North College Street, Greeneville, Tennessee. |   |
| <b>Sweetwater (City), Monroe County (FEMA Docket No. 7303)</b>   |   |
| <b>Sweetwater Creek:</b><br>Approximately 0.33 mile downstream of Southern Railway .....                             | *903  |
| Approximately 200 feet downstream of State Route 68 .....  | *917  |
| <b>Maps available for inspection</b> at the Sweetwater City Hall, 203 Monroe Street, Sweetwater, Tennessee.          |   |

**VERMONT**

|   |      |
|---|------|
| <b>Bellows Falls (Village), Windham County (FEMA Docket No. 7303)</b>   |      |
| <b>Connecticut River:</b><br>At a point approximately 0.85 mile upstream from Bellows Falls Dam .....                     | *299 |
| At a point approximately 500 feet upstream of Bellows Falls Dam .....   | *296 |
| <b>Maps available for inspection</b> at the Town of Rockingham, Town Clerk's Office, Village Square, Rockingham, Vermont. |      |
| <b>Rockingham (Town), Windham County (FEMA Docket No. 7303)</b>   |      |
| <b>Connecticut River:</b><br>A point approximately 0.78 mile upstream of Bellows Falls Dam .....                          | *300 |
| A point approximately 1.34 miles upstream of the confluence of Commissary Brook .....                                     | *306 |
| <b>Williams River:</b><br>At the confluence with the Connecticut River .....  | *302 |
| A point approximately 80 feet upstream of U.S. Route 5 .....  | *302 |
| <b>Maps available for inspection</b> at the Rockingham Town Hall, Clerk's Office, Village Square, Rockingham, Vermont.    |      |

**WEST VIRGINIA**

|   |  |
|---|--|
| <b>Jackson County (Unincorporated Areas) (FEMA Docket No. 7303)</b> |  |
|---|--|

| Source of flooding and location  | #Depth in feet above ground.<br>*Elevation in feet (NGVD) |
|--|---|
| <b>Mill Creek:</b><br>Just downstream of State Highway 87 .....  | *589  |
| Just downstream of County Highway 21 .....   | *599  |
| <b>Maps available for inspection</b> at the Jackson County Courthouse, Main Street, Ripley, West Virginia.             |   |
| <b>Ripley (City), Jackson County (FEMA Docket No. 7303)</b>  |   |
| <b>Mill Creek:</b><br>Approximately 450 feet downstream of U.S. Route 33 .....   | *593  |
| At confluence of Sycamore Creek .....  | *595  |
| At upstream corporate limits .....   | *599  |
| <b>Maps available for inspection</b> at the Ripley Municipal Building, 113 South Church Street, Ripley, West Virginia. |   |

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 31, 2000.

**Michael J. Armstrong,**  
Associate Director for Mitigation.

[FR Doc. 00-9068 Filed 4-11-00; 8:45 am]

**BILLING CODE 6718-04-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 20, and 43**

[CC Docket No. 99-301, FCC 00-114]

**Local Competition and Broadband Reporting**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission announces the adoption of a program to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. The Commission will use this information to help inform it craft its regulations in a manner that encourages development in these markets. The Commission further intends that this information will inform other policy makers and consumers about these markets. By understating the state of local telephony service competition and the deployment of broadband services, the Commission will be better able to fulfill its statutory obligations.

**DATES:** *Effective Date:* May 12, 2000.  
*Compliance Date:* For the first filing respondents must submit 1999 year-end data by May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Scott Bergmann or Ellen Burton, Industry Analysis Division, Common Carrier Bureau, at (202) 418-0940. For additional information concerning the information collections contained in the Report and Order (Order) contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (Order) released March 30, 2000 (FCC 00-114), issued in response to the Notice of Proposed Rulemaking released by the Commission on October 22, 1999 (FCC 99-301). The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857-3800, 1231 20th Street, NW, Washington, DC 20037. Additionally, the complete item is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common\_Carrier/Orders/2000/>.

**Outreach Workshops:** In an effort to inform respondents and answer questions regarding their filings, the Commission will hold two workshops in the Commission's Meeting Room at 445 12th Street, SW, Washington, DC 20554. The workshops will be held on April 17, 2000 and May 1, 2000. Details will be provided by Public Notice released by the Commission.

**Electronic Access and Filing**

You may obtain the latest version of the form (FCC Form 477) from the Common Carrier Bureau's website at <http://www.fcc.gov/broadband/data>. The form is best accessed using Excel 97. However, other comparable spreadsheet software programs may access a version of the form that will be located at the same website.

**Summary of the Report and Order**

1. In the Order summarized here, we adopt an information collection program to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. We conclude that we need timely and reliable information about the pace and extent of developing local competition in different geographic areas in order to

evaluate the effectiveness of actions that this Commission and the states are taking to promote local competition. We also conclude that we need timely and reliable information to assess the deployment of broadband services, as required by section 706 of the Telecommunications Act of 1996.

2. Moreover, we conclude that this information would allow us to avoid "one size fits all" regulation, and, specifically, to reduce regulation wherever we can pursuant to new sections 10 and 11 of the Act. 47 U.S.C. 160, 161. The Commission adopts a simple filing that should enable it to make better informed decisions, while placing as low a burden as possible on reporting entities.

3. Throughout the Order, we explain our reasons for the conclusions we reach. We assessed commenters' proposals for alternative means of collecting the needed information. The following text represents a brief summary of conclusions adopted in the Order.

4. *Types of Entities that Must Report:* In the Order, we discuss the types of entities that must report data describing the extent and intensity of local competition and the extent of broadband services deployment. Based on our determination that we need comprehensive data about developing competition for local telephone service, we decide that all local exchange carriers (LECs), both incumbent and competitive, should complete the applicable portions of Form 477 if they meet our defined threshold for deployment of service. We conclude that we should require local exchange carriers to complete Parts II and V of the form for each state in which they provide 10,000 or more voice-grade equivalent lines or wireless channels. Further, we require any facilities-based provider of mobile telephony (defined here as, real time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoffs of subscriber calls) to complete Part III of the form for each state in which it has 10,000 or more subscribers.

5. We next turn to a consideration of those entities that should report data on deployment of broadband services. The Order concludes that given our broad statutory mandate under section 706 of the Telecommunications Act of 1996, to evaluate the deployment of broadband services, regardless of the transmission media or technology employed, we should collect data from a wide range of broadband providers. More specifically,

we require providers of what we term "one-way broadband" and "full broadband" services to complete the applicable portions of Form 477, to the extent that they exceed the broadband reporting threshold. For purposes of the data collection, "full broadband" service is defined, consistent with the *Advanced Telecommunications Report*, as having an information carrying capacity of over 200 Kilobits per second (Kbps) in each direction, simultaneously. *An Inquiry Concerning the Deployment of Advanced Telecommunications Capabilities to All Americans in a Reasonable and Timely Fashion*, 14 FCC 2d 2398, paragraphs 20 through 25 (*Advanced Telecommunications Report*). "One-way broadband" service is defined as having an information carrying capacity of over 200 Kilobits per second (Kbps) in only one direction. Actual or potential providers of broadband services may include: LECs (incumbent and competitive), cable television companies, utilities, MMDS/MDS/"wireless cable" carriers, other fixed wireless providers, mobile wireless carriers (both terrestrial and satellite-based), government entities, and others. We believe that only by casting our net wide enough to include all such entities can we discern progress, or the lack of it, in meeting the goals stated in the *Advanced Telecommunications Report*. We thus conclude that any entity that provides at least 250 full or one-way broadband service lines (or wireless channels) or has at least 250 full or one-way broadband customers in a state should be required to complete Parts I and V of Form 477 for that state.

6. *Frequency of Reports:* We decide that we can best balance our need for timely information with our desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis. Given our desire to collect data to be used in the second *Advanced Telecommunications Report*, we direct that all respondents should file their end-of-year 1999 data on May 15, 2000. Thereafter, entities will report end-of-year data on March 1st and data as of June 30th on September 1st.

7. *Definition of Reporting Area:* To minimize the burden the reporting requirement places on reporting entities, we conclude that information should be reported by state. To aid our understanding of developments within a given state, we also require the reporting entity to provide the Commission with a list of Zip Codes in which they have at least one subscriber.

8. *Confidentiality of Data:* We continue to believe that the value of this

data collection is significantly enhanced by making as much information as possible available to the public. At the same time, we conclude that we can achieve this goal in a manner that ensures the non-disclosure of confidential provider-filed data. We discuss, below, our affirmative policies for handling this information and we believe that these policies will allay commenter concerns that legitimately protectible information would be released to the public. We do not, in this Order, make findings about whether the data elements requested in the reporting form would satisfy the Commission's articulated standard for non-disclosure of competitively sensitive information, but we do make clear that our rules for requesting non-disclosure of confidential information will be available to all filers of the FCC Form 477. Moreover, for purposes of this information collection, we take steps to simplify the procedures for requesting confidential treatment of data. Our rules for requesting non-disclosure of competitively sensitive information afford sufficient protection to providers and appropriately balance the concerns of parties submitting information with the interests of the public in obtaining access to that information. We also make clear that we will not release information that is the subject of non-disclosure requests until persons requesting confidential treatment are afforded all of the procedural protections provided by our confidentiality rules. We expect that these policies will allow us to accomplish our goal of making as much information as possible available to the public while ensuring that service providers can file data with confidence that any information found to be competitively sensitive under our rules will not be disclosed.

9. We note that several commenters express concern over the potential for competitive harm that release of the gathered data could cause and, in particular, about the ability of competitors to take the data submitted and tailor market strategies to quash nascent competition, protect areas that are being subjected to increased competition, or deploy facilities to defend strongholds. Again, we believe that our confidentiality rules afford appropriate protection of legitimately protectible information, but we take additional steps to clarify our existing rules for treatment of competitively-sensitive data because we expect that some of the respondents to this form may be less familiar with Commission practices. The Commission's policy on

confidential treatment of information submitted pursuant to a survey or study is to "allow survey and study respondents to request confidential treatment pursuant to Section 0.459 to the extent they can show by a preponderance of the evidence a case for non-disclosure consistent with the Freedom of Information Act (FOIA)." Assessment of the confidentiality of the information is made on a case-by-case basis and action on confidentiality requests is routinely deferred until a request for inspection is made.

10. We also recognize that there is considerable diversity in the way that individual service providers handle the data pertaining to their operations. Indeed, it is our understanding that some providers release considerable data about the nature of their operations, while others more closely safeguard such data, including the type of data that we request in the reporting form. We anticipate that providers will request confidential treatment for data filed where they deem it appropriate. In these cases, and in accordance with the Commission's rules, we will honor all parties' requests for confidential treatment of information that they identify as competitively sensitive until persons requesting confidential treatment are afforded all of the procedural protections provided by our confidentiality rules. Moreover, in such cases, we agree with those commenters who suggest that we can aggregate much of the data—for example, by carrier class and to the state level—so that it does not identify the individual provider in our regularly published reports.

11. We also take an additional step to reduce provider concerns about the release of information identified as competitively sensitive by making it easier for providers to request confidential treatment of their data. In particular, we place a check-box on the first page of the FCC Form 477 that allows providers to request non-disclosure of all or portions of their submitted data without filing at this point in the process the detailed confidentiality justification required by our rules. Thus, where parties seek confidential treatment, they need only check the well-marked box on the first page of the form and provide a completed and a redacted version of the form, as explained fully in the instructions to the Form 477. If the Commission receives a request for, or proposes disclosure of, the information contained in the Form 477, the provider will be notified and required to make the full showing under our rules. Given the unique nature of this data collection,

these streamlined procedures for requesting non-disclosure should greatly improve the ability of smaller providers and providers that are less familiar with the Commission's rules to request confidential treatment of their data. We expect that this will lead to a greater level of compliance with this information collection and will give providers confidence that protectible data will not be published in our regular reports.

12. *Part I: Broadband Data.* Without making a prospective decision about whether these data elements would satisfy the Commission's standard for non-disclosure, we state our intention not to publish in our publicly-available reports individual provider-filed data for the broadband (Part I) portion of the form, even where providers do not seek non-disclosure of this data. At this time, we do not have sufficient evidence in the record to make a universally applicable decision about the competitive sensitivity of all of the Part I Broadband information for all providers, but we do agree to aggregate this information in a way that does not identify the individual provider data in our reports because commenters have made at least an initial showing that all or most of the data filed in these sections is typically held confidential by providers of these services. Our decision not to publish individual provider submissions from the Part I Broadband section reflects the particular and limited purposes of this data collection and our desire to maximize the level of voluntary compliance with the information collection. While this is a mandatory collection, we wish to collect as much, and as accurate, information as possible about the status of broadband deployment in a short period of time. We also, as part of this information collection, encourage service providers that are below the reporting thresholds to report data on a voluntary basis. Moreover, particularly with respect to the Part I broadband data, we conclude that we can achieve substantially the same public benefits by releasing this information in an aggregated fashion without any potential risk of competitive harm on the part of respondents. Given the unique nature of this information collection, we believe that this extra step will improve compliance, thus enhancing our understanding of the broadband market, without any material diminution in value of the information collection. Thus, we agree to publish in our regular reports data from Part I of the form only once it has been aggregated, for example by provider class, regardless of whether

parties request confidential treatment on the broadband portion of the form.

13. *Parts II and III: Local Competition Data.* With respect to the data filed in Parts II and III of the form concerning wireline and wireless local telephone service, we will also report data in a manner that aggregates and does not identify the identity of providers where providers have requested non-disclosure of the data. We do not decide in advance to publish all of the data filed in Part II of the form in an aggregated fashion, however, because it is our experience that portions of this data are already made publicly available by the individual companies or from other sources. We note, for example, that the local competition market is characterized by incumbent firms that routinely make available their line count data, similar to that reported in Part II of the form. Similarly, competitive LECs in some states are required to submit line count data and this information is routinely made publicly available. We expect that such providers reporting data in Part II of the form will not request non-disclosure of data that has already been made publicly available and that the Commission will be able to publish this data in our reports. Concerning the Part III mobile telephony data, we recognize that mobile telephony providers argue that state-by-state subscriber counts are not routinely made publicly available. We do not, however, have sufficient evidence to make an across-the-board finding at this time. Accordingly, providers submitting data concerning these services may check the box on Form 477 to request confidential treatment of their data, which will afford them the protection of the Commission's confidentiality rules.

14. We emphasize that apart from publicly available information, which we anticipate reporting, we intend to publish the local competition data in our local competition reports only to the level of detail necessary to provide an understanding of how local competition is developing. We therefore agree with those commenters who suggest that we can aggregate much of the data—for example, by carrier class and to the state level—so that it does not identify the individual provider in our regularly published reports. This reporting approach, as well as providers' ability to request confidential treatment under our rules, should maximize the level of voluntary compliance with the information collection.

15. *Part V: Zip Code Data.* In the particular case of Zip Code data (*i.e.*, the lists of Zip Codes where service is offered), the Commission intends to

report information on Zip Codes served, but it will not release the identity of specific providers in a given Zip Code. Public release of Zip Code data in this manner is appropriate, we believe, because it does not reveal information about the actual subscribership levels for any particular provider, but only indicates the presence of one or more providers in the given Zip Code. Although we think it unlikely that any provider would consider this limited release to reveal competitively sensitive information, we do not limit parties' ability to seek non-disclosure of such data under the Commission's rules.

16. *Sharing data with State Commissions.* Finally, because we wish to maximize the value of this information collection for states, we conclude that the Chief of the Common Carrier Bureau may release the information collected under this program to the state commissions, subject to certain conditions. A state commission may view all data submitted on a carrier specific basis, by entities filing data for that commission's state, provided that the state has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure of any confidential information. However, where state laws afford less protection than federal FOIA laws, the higher federal standard will prevail. We are aware that there are two states that have "open records" statutes that may prevent the state from providing confidential protection for sensitive provider information. In these situations, we will work with these state commissions to enable them to obtain access to such information in a manner that addresses the state's need for this information and also protects the confidential nature of the provider's sensitive information. We anticipate that these actions will give state commissions a valuable and unique view into the state of local competition and broadband deployment in their states. In addition, we hope that this will further our goal of reducing the overall reporting burdens placed on entities in these markets by minimizing the need for additional information collection programs at the state level.

17. We conclude that these policies, taken as a whole, most effectively balance provider concerns with our broader goals for this proceeding. As stated in the Notice, by making the information available, consumers, investors, and policy makers will be better able to make informed decisions on the development of these markets. Such information has value because a

better-informed marketplace promotes a more efficient marketplace. Also, by allowing public release of as much of the information as possible, associations, scholars, and others will be able to use the information in their independent analyses of Commission policies, thereby aiding the Commission in crafting regulations that address specific market problems and eliminating those regulations that have outlived their usefulness.

18. *Electronic Filing:* We adopt the method proposed in the Notice for collection of the information through electronic filing except to modify the allowable methods of submission. Specifically, the form will be made available to reporting entities on the Common Carrier Bureau's website at <www.fcc.gov/broadband/data> and will utilize Excel 97 software, as well as other comparable spreadsheet software programs. Carriers and other entities that must comply with this requirement may submit their completed forms to a specified e-mail address or forward to the Commission diskette copies. Regardless of whether the reporting entity e-mails its submission or mails diskette copies, an officer of the reporting entity must submit a "Certification Statement" to the Commission attesting to the truthfulness of the data submitted. We conclude that this filing system will ensure, for both the reporting entities and the Commission, that the burdens of the program are minimized and that unnecessary expenditures for compliance are not incurred. Also, by allowing diskette submissions, reporting parties seeking confidential treatment can further ensure that the information submitted is protected.

19. To ensure that this information collection program does not outlive its usefulness, the reporting requirement adopted in the Order will terminate in five years, unless the Commission takes affirmative steps to preserve it.

20. *Data to be Reported:* We describe, in the Order, the specific items set out in the data collection form. A brief description of the data collection form follows, with greater detail found in the complete Order.

21. Part I of the form collects information about the number of broadband lines in service to consumers. This includes information about both "full broadband" lines, with information carrying capacity in excess of 200 Kbps in both directions, simultaneously, and asymmetric "one way broadband" lines, with information carrying capacity in excess of 200 Kbps in one direction but not both.

22. Part II of the form collects information from incumbent LECs and competitive LECs about the number of voice-grade equivalent lines and fixed wireless channels in service to provide local exchange or exchange access service. We also require respondents to provide information about the extent to which they use their own facilities in providing these lines or wireless channels, and the extent to which they use the facilities or services of other LECs in doing so.

23. Part III of the form collects information about mobile telephony subscribership.

#### **Final Paperwork Reduction Act of 1995 Analysis**

24. As required by the Paperwork Reduction Act of 1995, the *Local Competition and Broadband Deployment Notice* invited the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in the Notice. On December 22, 1999, OMB approved the proposed information collection, as submitted to OMB.<sup>1</sup> In this Order, we adopt the proposed Local Competition and Broadband Reporting form, but modify our proposal to reflect comments received from OMB and other commenters. The revised Local Competition and Broadband Reporting has been approved by OMB. The OMB Control Number is 3060-0816.

#### **Final Regulatory Flexibility Act Analysis**

25. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice issued in this proceeding, FCC 99-301, October 22, 1999. The Commission sought written comment in the Notice, including comments on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996).

#### *(1) Need for, and Objectives of, the Local Competition and Broadband Reporting Order*

26. The Commission initiated this proceeding to determine whether it should require certain providers of communications services to report a limited amount of information about the

<sup>1</sup> See Letter from Donald R. Arbuckle, Office of Management and Budget, to Judy Boley, Federal Communications Commission (Dec. 22, 1999).

development of local telephone competition and the deployment of broadband services as mandated by the Telecommunications Act of 1996. In this Order, we adopt rules to collect basic information about two important aspects of communications: the status of local telephone service competition and the deployment of "advanced telecommunications capability." The 1996 Act—in particular, sections 251 and 271—tasked the Commission and the states with important roles in opening local telephone markets to competition. Moreover, the Commission needs timely and reliable information on broadband deployment given that section 706 of the 1996 Act requires the Commission to issue periodic reports on the state of broadband deployment. The information collected pursuant to this program will materially improve our ability to develop, evaluate, and revise policy in these critical areas and will provide valuable benchmarks not only for this Commission but for other policy makers and consumers. Further, the information collection program adopted in this Order is the least burdensome means available to fulfill these statutory obligations.

*(2) Summary of Significant Issues Raised by Public Comment in Response to the IRFA*

27. In the IRFA, we stated that we would seek to minimize the burden imposed on smaller entities by establishing thresholds for reporting that balanced the needs of the Commission to receive data on the development of local competition and deployment of broadband against the burden such reporting places on smaller entities. In response to the Notice, the Commission received comments from 37 parties and held a series of *ex parte* meetings with potential respondents to the information collection adopted in this Order. Among those parties, only the Office of Advocacy, United States Small Business Administration (SBA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), commented specifically on the IRFA. We note that many other commenters raised issues about the proposed rules and we encourage readers of this FRFA to consult the complete text of this Order, which describes in detail our analysis of commenter proposals.

28. In its comments to the IRFA, SBA expresses concern that the proposed threshold for reporting broadband data (1,000 broadband lines nationwide) may be set too low and, therefore, include a number of smaller entities that would be

unduly burdened by the reporting requirement. As a result, SBA recommends that the Commission raise the reporting threshold to at least 5,000 lines nationwide or "significantly reduce the burden on the small businesses that would be replying." OPASTCO, in its comments, commends the Commission for its efforts to exempt smaller entities and urges the Commission to adopt an existing SBA definition of small companies: those with fewer than 1,500 employees. We note that other commenters, while not in direct response to the IRFA, disagree with SBA and OPASTCO and urge the Commission to adopt its proposed reporting threshold.

29. In an effort to balance the needs of the Commission with the costs our data gathering may place on smaller entities, the Commission has modified the thresholds for reporting and the frequency of filing reports, and other aspects of the requirements. We believe that these modifications satisfy SBA's request that we significantly reduce the burdens for those small entities that must comply. For example, by adopting a state level threshold (250 broadband lines in a given state), we ensure that reporting entities have a significant presence in a given state, before having to complete the form for that state. Moreover, we conclude that this threshold is set to allow the Commission to comply with Congress' charge in section 706 of the 1996 Act to determine whether advanced telecommunications capability, commonly known as "broadband," is being deployed to *all* Americans. In order to gain the comprehensive understanding—as called for in section 706—of the broadband market, particularly in rural and inner-city areas and among demographic groups that are traditionally underserved, it is necessary to gather data from entities that are most likely to serve these areas and groups, which include some smaller entities.

30. Among the other actions taken to reduce the overall burden on small entities, we decouple the broadband and local competition reporting thresholds. In the Notice, the Commission tentatively concluded that any provider meeting the threshold requirement for the broadband part of the form would be required to complete the local competition part of the form, whether or not the entity met the threshold for that part, if the entity provides services listed in that part of the form. We note that the representatives of traditionally smaller providers opposed this linkage of reporting thresholds. By eliminating this linkage, we reduce reporting

burdens on these traditionally smaller providers.

31. To further reduce the potential burden this data gathering program may place on smaller entities the Commission, in this Order, has also reduced the frequency of reporting from quarterly to semi-annually. In this regard, we accept the suggestions of many commenters that reducing the frequency of reporting is a measurable way to decrease the burden placed on reporting entities. We necessarily decline SBA's invitation to adopt an annual filing basis, because we conclude that the rapidly changing nature of the local competition and broadband markets necessitate more regular data collections.

32. Supporting the proposal in the Notice, SBA further encourages the Commission to collect information on a statewide basis. In this Order, we adopt our proposal and require providers to report data on a state-by-state basis. To supplement this data, we ask providers of broadband and local exchange services to provide a list of the Zip Codes in which they serve at least one customer. We conclude that reporting scheme best balances our need to achieve geographically disaggregated information while minimizing burdens on all entities, including small entities.

33. Finally, we note SBA's suggestion that small carriers be allowed to file data on a voluntary basis. While the Commission concludes that it is necessary to adopt a mandatory reporting mechanism, we agree with SBA that smaller, exempted providers should be invited to file data on a voluntary basis. Thus, we encourage small providers to file the new FCC Form 477 even if they do not meet the reporting thresholds for mandatory reporting.

34. Overall, we believe that our approach (*e.g.*, changing thresholds to the state level, decoupling the thresholds for different parts of the form, and reducing the reporting frequency to semi-annually) will result in a program that is not overly burdensome on reporting entities, and thus balances the concerns raised by SBA and other commenters with the Commission's need to gain a better understanding of developments in these markets.

*(3) Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

35. In the IRFA, the Commission included a description and estimate of the number of small entities to which its proposed rules would apply. No commenters addressed the issue. In this

Order, the Commission decides that local exchange carriers and providers of mobile telephony services that serve 10,000 or more voice-grade equivalent lines or wireless channels (or mobile telephony subscribers) in a given state and any entity that provides 250 or more full or one-way broadband lines or channels in a given state, must report data about those services provided in that state. Based on data available to it at present, the Commission estimates that approximately 200 of the nation's local exchange carriers and between 100–200 mobile telephony providers will be required to comply with the requirement. We do not have concrete data on which to base a precise estimate of the number of broadband providers that may be required to report. We set out, however, a detailed description of the types of entities that may be required to comply with the reporting requirement and we detail our understanding of the number of small entities within each of these categories.

36. To estimate the number of small entities that will be affected by the rules, we first consider the statutory definition of “small entity” under the RFA. The RFA generally defines “small entity” as having the same meaning as the term “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, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

37. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection

with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

38. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” 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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

39. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (“the Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not “independently owned and operated.” For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by the decisions and rules in the Order.

40. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.

According to SBA’s definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA’s definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in the Order.

41. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,560 LECs and CAPs, 171 IXCs, 24 OSPs, and 388 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA’s definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and rules in the Order.

42. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.

According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in the Order.

43. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. We will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies, however, to the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that may be affected by the decisions and rules in the Order.

44. *Broadband PCS Licensees.* The broadband 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 less than \$40 million 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 regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition 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% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

45. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do 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 less than \$15 million. Consequently, we estimate, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in the Order.

46. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small

entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licenses that may be affected by the decisions and rules in the Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we conclude, for purposes of this FRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in the Order.

47. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. 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 definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition, some of which may be affected by the decisions and rules in the Order.

48. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined 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 defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

49. *Narrowband PCS*. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licenses for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

50. *Rural Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

51. *Air-Ground Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

52. *Private Land Mobile Radio (PLMR)*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of, if any, small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules in this context could potentially impact every small business in the United States. We note, however, that because the vast majority of these licensees are end-users, not providers of telephony or broadband services, they would not be directly affected by the rules adopted in this Order.

53. *Fixed Microwave Services*. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

54. *Offshore Radiotelephone Service*. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

55. *Wireless Communications Services*. This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules adopted in the Order includes these eight entities.

56. *Satellite Services*. The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million. The Census report does not provide more precise data.

57. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

58. *Cable services or systems*. The SBA has developed a definition of small



entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.

59. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

60. The Communications Act also contains a definition of a small cable system operator, 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 there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66,000,000 subscribers, and we

have based our fee revenue estimates on that figure.

61. *Multipoint Distribution Systems (MDS)*: The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

62. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules adopted in the Order.

63. *Electric Services (SIC 4911)*: The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

64. *Electric and Other Services Combined (SIC 4931)*: The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

65. *Combination Utilities, Not Elsewhere Classified (SIC 4939)*: The SBA defines this utility as providing a combination of electric, gas, and other

services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

#### *(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

66. The very focus of this proceeding is whether the Commission should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services. The Order concludes that the Commission should undertake such a data collection and that local exchange carriers and providers of mobile telephony services that serve 10,000 or more voice-grade equivalent lines or channels statewide, and any entity that provides 250 or more full or one-way broadband lines or channels statewide, should report specifically targeted information. The Order sets out in detail the types of providers that should report, exempting smaller providers, frequency of reports, data to be reported, and method of reporting. In particular, we conclude in the Order that given the comprehensive data to be obtained from large and medium size providers, it can exempt most small providers from completing the survey without materially affecting its ability to assess the development of local telephone competition and the deployment of broadband services.

#### *(5) Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

67. The most significant step taken to minimize the impact of these rules on small entities is the adoption of reporting thresholds. For example, the Commission makes specific provision to exempt most smaller carriers from the requirement to report local telephone competition data. The Commission concludes that carriers with fewer than 10,000 statewide voice-grade equivalent lines or channels (or mobile telephony subscribers, in the case of mobile telephony providers) should be exempted from the reporting requirement for that state. Based on this exemption, the Commission estimates that only approximately 200 of the nation's largest local exchange carriers would remain subject to the

requirement. Similarly, the Commission exempts the smallest broadband providers by adopting a broadband reporting threshold. Thus, firms that provide fewer than 250 full or one-way broadband lines or wireless channels in a given state need not report data for that state.

68. Among significant alternatives, the Commission considered whether it might rely on publicly available data or voluntary surveys, in lieu of a mandatory data collection program. The Commission concludes other publicly available information sources present less than complete pictures of actual conditions and trends in developing local service markets and in the deployment of broadband. Further, the Commission considered the need for, and size of, its exemptions for small entities. The Commission concludes that the thresholds adopted will allow it to exempt most smaller carriers from completing the form without materially affecting its ability to assess the development of local competition and the deployment of broadband services. The Commission also accepted other suggestions that will reduce burdens on entities, including decoupling reporting thresholds, adopting a less frequent reporting schedule, and allowing providers to report on a state-by-state basis.

69. *Report to Congress.* The Commission will send a copy of the Local Competition and Broadband Reporting Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Local Competition and Broadband Reporting Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Local Competition and Broadband Reporting Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

#### Ordering Clause

70. Accordingly, *it is ordered* that, pursuant to sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Telecommunications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this order, with all attachments, is hereby adopted.

71. That the requirements and regulations established in this Order

shall become effective May 12, 2000. The Commission shall place a notice in the **Federal Register** announcing the effective date of the requirements and regulations adopted herein.

72. That providers subject to the requirements and regulation established in this Order shall complete and file the Local Competition and Broadband Reporting Form (FCC Form 477) no later than May 15, 2000 and semi-annually thereafter.

73. That the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Local Competition and Broadband Reporting Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

#### Paperwork Reduction Act

The action contained in this Order summarized here contains a modified information collection.

*OMB Approval Number:* 3060–0816.

*Title:* “Local Competition and Broadband Reporting, CC Docket No. 99–301.”

*Form Number:* FCC Form 477.

*Type of Review:* Revision of Existing Collection.

*Respondents:* Business or Not-for-profit institutions, including small businesses.

*Burden Estimate:* Average burden per respondent—

Number of Respondents: up to 255.

Estimated Time Per Response Per State: 11.1.

Number of Reports Per Year: 2.

Average States Per Respondents: 5.3.

*Total Annual Burden:* Up to 29,924 person-hours.

*Estimated Costs per Respondent:* \$0.00.

*Needs and Uses:* The information collection will be used by the Commission to gather information on the state of the development of local competition and broadband deployment. Without such information, the Commission faces significant difficulty in assessing the development of these markets and, therefore, is less able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

#### List of Subjects

47 CFR Parts 1 and 43

Communications common carriers, Reporting and recordkeeping

requirements, Telecommunications, Telephone.

47 CFR Part 20

Communications common carriers, Federal Communications Commission.

William F. Caton,  
Deputy Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1, 20 and 43 as follows:

#### PART 1—PRACTICES AND PROCEDURES

1. The authority citation for part 1 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r), 309.

2. In part 1, subpart U is added to read as follows:

#### Subpart U—Implementation of Section 706 of the Telecommunications Act of 1996; Commission Collection of Advanced Telecommunications Capability Data

Sec.

1.6000 Purpose.

1.6001 Scope and content of filed reports.

1.6002 Frequency of reports.

#### § 1.6000 Purpose.

The purpose of this subpart is to set out the terms by which certain commercial and government-controlled entities report data to the Commission concerning the deployment of advanced telecommunications capability, defined pursuant to 47 U.S.C. 157 as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology,” and the deployment of services that are competitive with advanced telecommunications capability.

#### § 1.6001 Scope and content of filed reports.

(a) Definitions. Terms used in this subpart have the following meanings:

(1) *Facilities-based providers.* Those entities that provide broadband services over their own facilities or over Unbundled Network Elements (UNEs), special access lines, and other leased lines and wireless channels that the entity obtains from a communications service provider and equips as broadband.

(2) *Full broadband lines or wireless channels.* Lines or wireless channels

with information carrying capability in excess of 200 Kbps in both directions simultaneously.

(3) *One-way broadband lines or wireless channels.* Lines or wireless channels with information carrying capability in excess of 200 Kbps in at least one direction, but not both.

(4) *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, Multichannel Multipoint Distribution Service (MMDS/MDS) "wireless cable" carriers, other fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, which are facilities-based providers and are providing at least 250 full or one-way broadband lines or wireless channels in a given state, or provide full or one-way broadband service to at least 250 end-user consumers in a given state, 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 exceed this threshold.

(c) Respondents identified in paragraph (b) of this section shall file the FCC Form 477 on diskette or via e-mail, as directed in the instructions to the FCC Form 477. Upon submission of each report, an original certification letter (as contained in the instructions to FCC Form 477) signed by the responsible official shall be mailed to the Commission.

(d) Respondents may make requests for Commission non-disclosure of provider-specific data contained in FCC Form 477 under § 0.459 of this chapter by so indicating on 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 Common Carrier 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.

(e) Respondents identified in paragraph (b) of this section shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5

percentage points is considered significant.

(f) Failure to file the FCC Form 477 in accordance with the Commission's rules and the instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.

#### § 1.6002 Frequency of reports.

Entities subject to the provisions of § 1.6001 shall file reports semi-annually. Reports shall be filed each year on or before March 1st (reporting data about the status of their broadband deployment as of December 31 of the prior year) and September 1st (reporting data about the status of their broadband deployment as of June 31 of the current year). Entities becoming subject to the provisions of § 1.6001 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter. Entities subject to the provisions of § 1.6001 shall make an initial filing of the FCC Form 477 on May 15, 2000 (reporting data about the status of their broadband deployment as of December 31, 1999).

#### PART 20—COMMERCIAL MOBILE RADIO SERVICES

3. The authority citation for part 20 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

4. In § 20.15, paragraph (b)(1) is revised to read as follows:

#### § 20.15 Requirements under Title II of the Communications Act.

\* \* \* \* \*

(b) \* \* \*

(1) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with §§ 1.781 through 1.814 and 43.21 of this chapter; except that commercial radio service providers that offer broadband service, as described in § 1.6001(a) or mobile telephony are required to file reports pursuant to §§ 1.6000 and 43.11 of this chapter to the extent that they meet the thresholds as set out in §§ 1.6001(b) and 43.11(a) of this chapter. For purposes of this section *mobile, telephony* is defined as real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls.

\* \* \* \* \*

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

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

**Authority:** 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 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.

6. In § 43.01, paragraph (b) is revised and paragraph (d) is added to read as follows:

#### § 43.01 Applicability

\* \* \* \* \*

(b) Except as provided in paragraphs (c) and (d) of this section, carriers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of this part.

\* \* \* \* \*

(d) Common carriers subject to the provisions of § 43.11 shall file data semi-annually. Reports shall be filed each year on or before March 1st (reporting data about their deployment of local exchange services as of December 31 of the prior year) and September 1st (reporting data about their deployment of local exchange services as of June 31 of the current year). Common carriers becoming subject to the provisions of § 43.11 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter. Common carriers subject to the provisions of § 43.11 shall make an initial filing of the FCC Form 477 on May 15, 2000 (reporting data about their deployment of local exchange services as of December 31, 1999).

7. Section 43.11 is added 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)) or commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in section 20.15(b)(1) of this chapter), which provide at least 10,000 voice-grade equivalent lines or wireless channels or have at least 10,000 end-user consumers in a given state, 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 exceed this threshold.

(b) Respondents identified in paragraph (a) of this section shall file the FCC Form 477 on diskette or via e-mail, as directed in the instructions to the FCC Form 477. Upon submission of each report, an original certification letter (as contained in the instructions to FCC Form 477) signed by the responsible official shall be mailed to the Commission.

(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 Common Carrier 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.

(d) Respondents identified in paragraph (b) of this section shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5 percentage points is considered significant.

(e) Failure to file FCC Form 477 in accordance with the Commission's rules and the instructions to Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.

[FR Doc. 00-9187 Filed 4-11-00; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AF34

#### Endangered and Threatened Wildlife and Plants; Threatened Status for the Santa Ana Sucker

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), determine threatened status according to the Endangered Species Act of 1973, as amended (Act), for the Santa Ana sucker (*Catostomus santaanae*). The species is threatened by

potential habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, intensive recreation, introduction of nonnative competitors and predators, and demographics associated with small populations. The final rule invokes the Federal protection afforded by the Act for the Santa Ana sucker within the Los Angeles, San Gabriel, and Santa Ana River drainages.

**DATES:** The effective date of this rule is May 12, 2000.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008.

**FOR FURTHER INFORMATION CONTACT:** Glen W. Knowles, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (telephone 760-431-9440; facsimile 760-431-9624).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Santa Ana sucker (*Catostomus santaanae*) is a recognized species and member of the sucker family (*Catostomidae*) (Robbins *et al.* 1991). The Santa Ana sucker was originally described as *Pantosteus santa-anae* by Snyder (1908). The genus *Pantosteus* was reduced to a subgenus of *Catostomus*, and the hyphen was omitted from the specific name in a subsequent revision of the nomenclature (Smith 1966). Smith and Koehn (1971) and Smith (1992) continued to recognize *Pantosteus* as a subgenus, although several authors have followed earlier usage (Miller 1959) in recognizing *Pantosteus* as a genus related to *Catostomus* (Minckley 1973; Minckley *et al.* 1986).

Moyle (1976a) described the Santa Ana sucker as being less than 16 centimeters (cm) (6.3 inches (in.)) in length. The species is silvery below and darker along the back, with irregular blotches and pigmented membranes connecting the rays of the tail (Moyle 1976a).

The Santa Ana sucker inhabits streams that are generally small and shallow, with currents ranging from swift (in canyons) to sluggish (in the bottomlands). All the streams are subject to periodic severe flooding (Moyle 1976a). Santa Ana suckers appear to be most abundant where the water is cool (less than 22° Celsius (72° Fahrenheit)), unpolluted, and clear, although they can tolerate and survive

in seasonally turbid water (Moyle 1976a; Moyle and Yoshiyama 1992). Santa Ana suckers feed mostly on algae, diatoms, and detritus scraped from rocks and other hard substrates, with aquatic insects making up a very small component of their diet. Larger fish generally feed more on insects than do smaller fish (Greenfield *et al.* 1970; Moyle 1976a).

Santa Ana suckers generally reach sexual maturity in just over 1 year and typically do not live more than 3 years (Greenfield *et al.* 1970). Spawning generally occurs from early April to early July, with a peak in spawning activity occurring in late May and June (Greenfield *et al.* 1970; Moyle 1976a). The spawning period may be variable and protracted, however. Recent field surveys on the East Fork of the San Gabriel River found evidence of an extended spawning period. These surveys found small juveniles (<30 millimeters (mm) standard length (<1.2 in.)) in December (1998) and March (1999) at the San Gabriel River site (U.S. Geological Survey (USGS) data, *in litt.* 1999). This data indicates that spawning may be very protracted in this stream, and begin as early as November. The fecundity of the Santa Ana sucker appears to be exceptionally high for a small sucker species (Moyle 1976a). Total fecundity of six females, ranging in size from 78 mm (3.1 in.) to 158 mm (6.2 in.), ranged from 4,423 to 16,151 eggs (Greenfield *et al.* 1970). The combination of early sexual maturity, a protracted spawning period, and high fecundity should allow the Santa Ana sucker to quickly repopulate streams following periodic flood events that could decimate populations (Moyle 1976a).

Historically, the Santa Ana sucker appeared to be native to the rivers and larger streams of the Los Angeles Basin—the Los Angeles, San Gabriel, and Santa Ana River drainage systems in Los Angeles, Orange, Riverside, and San Bernardino Counties (Smith 1966). Although historic records are scarce, Santa Ana suckers presumably ranged from near the Pacific Ocean to the uplands of the Los Angeles and San Gabriel River systems, and to at least where Pump House #1 is now located (near the San Bernardino National Forest boundary) in the Santa Ana River (Swift *et al.* 1993; Camm Swift, Ichthyologist Consultant, pers. comm. 1996). Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976a), the species has experienced declines throughout most of its range (Moyle *et al.* 1995; Swift *et al.* 1993). The species is now restricted to three noncontiguous populations: