the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Signifiantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements.

**Authority:** This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 7, 2002.

**Elissa Speizman,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 02–4788 Filed 2–27–02; 8:45 am]

**BILLING CODE 6560–50–U**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 51

**[CC Docket No. 02–33, CC Docket No. 95–20, CC Docket No. 98–10; FCC 02–42]**

## Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document initiates a thorough examination of the appropriate legal and policy framework under the Communications Act of 1934, as amended (the Act), for broadband access to the Internet provided over domestic wireline facilities. In particular, it seeks comment on the appropriate statutory classification and regulatory framework for wireline broadband Internet access services. It also seeks comment on whether facilities-based providers of broadband Internet access services provided over wireline and other platforms, including cable, wireless and satellite, should be required to contribute to universal service. For purposes of this Notice of Proposed Rulemaking, the Commission uses the term ''facilities-based'' to refer to providers of broadband Internet access services that furnish their own last-mile connection, irrespective of transmission medium, to the customer. Through this proceeding, the Commission intends to further its goals of encouraging the ubiquitous availability of broadband to all Americans, promoting the development and deployment of multiple broadband platforms, fostering investment and innovation in a competitive broadband market, and developing an analytical framework for regulating broadband that is consistent, to the extent possible, across multiple platforms.

**DATES:** Comments are due April 15, 2002 and reply comments are due May 14, 2002.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket Nos. 02–33, 95–20 and 98–10, FCC 02–42, adopted February 14, 2002, and released February 15, 2002. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

**Synopsis of the Notice of Proposed Rulemaking (NPRM)**

1. *Background.* In this proceeding, the Commission initiates an examination of the legal and policy framework under the Act for broadband access to the Internet provided over domestic wireline facilities. The widespread deployment of broadband infrastructure has become a central communications policy objective and it is believed that widespread ubiquitous broadband deployment will bring valuable new services to consumers, stimulate economic activity and advance economic opportunity. The Commission has also initiated three other proceedings that focus on the regulatory treatment of broadband. These proceedings, together with this NPRM, build the foundation for a comprehensive and consistent national broadband policy. First, near the end of 2000, the Commission launched the *Cable Modem NOI.* (65 FR 60441, October 11, 2000) This considers, among other issues, the appropriate regulatory classification for cable modem service, which is used to provide high-speed Internet access. Second, in the *Incumbent LEC Broadband Notice,* (67 FR 1945, January 15, 2002) the Commission examines whether incumbent local exchange carriers (LECs) that are dominant in the provision of traditional local exchange and exchange access service should also be considered dominant when they provide broadband telecommunications services. Third, in the *Triennial UNE Review Notice,* (67 FR 1947, January 15, 2002) the Commission addresses, among other things, the incumbent LECs' wholesale obligations under section 251 of the Act to make their facilities available as unbundled network elements to competitive LECs for the provision of broadband services. These latter two proceedings thus investigate how Title II regulation under the Act applies to broadband service provided as telecommunications services and whether facilities that can be used to provide broadband services should be

subject to Title II unbundling obligations. By contrast, this NPRM addresses the fundamental definitional and classification questions for wireline broadband Internet access services. Because the instant inquiry overlaps with the Commission's pending *Computer III Further Remand,* (60 FR 12529, March 7, 1995) the Commission incorporates the *Computer III Further Remand* proceeding by reference insofar as it relates to the Bell Operating Companies' (BOCs) access obligations with respect to broadband services.

2. This proceeding specifically addresses questions regarding classifying Internet access service that were raised in two Commission proceedings, the 1998 Report to Congress on Universal Service, *Federal—State Joint Board on Universal Service,* CC Docket No. 96–45, Report to Congress, 13 FCC Rcd 11501 (rel Apr. 10, 1998), (63 FR 43088, August 12, 1998) and the *Missouri/Arkansas 271 Order. See Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri,* CC Docket No. 01–194, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20759–60, paras. 81–82 (2001). (66 FR 59249, November 27, 2001)

3. *Application of Statutory Classifications to Wireline Broadband Internet Access Services.* The NPRM discusses the appropriate classification of wireline broadband Internet access services. The Commission tentative concludes that, as a matter of statutory interpretation, the provision of wireline broadband internet access service is an information service. The Commission tentatively concludes that when an entity provides wireline broadband Internet access service over its own transmission facilities, this service, too, is an information service under the Act. In addition, the Commission tentatively concludes that the transmission component of retail wireline broadband Internet access service provided over an entity's own facilities is ''telecommunications'' and not a ''telecommunications service'' as defined in section 3 of the Act.

4. Applying the statutory framework in the Act, the Commission tentatively concludes that providers of wireline broadband Internet access service offer more than a transparent transmission path to end-users and offer enhanced capabilities. Thus, it tentatively concludes that this service is properly classified as an ''information service'' under section 3 of the Act. The Commission bases this tentative conclusion on the fact that providers of wireline broadband Internet access provide subscribers with the ability to run a variety of applications that fit under the characteristics stated in the ''information service'' definition in section 3 of the Act. The Commission seeks comment on these tentative conclusions and the supporting statutory analysis asks additional questions with regard to the proper classification of wireline broadband Internet access service, including asking parties to offer any factual evidence that would suggest a contrary application of the statute.

5. The NPRM also analyzes whether wireline broadband Internet access service provided over the provider's own facilities is an information service, a telecommunications service, or both. As an initial matter, the Commission tentatively concludes that nothing about the nature of wireline broadband Internet access services offered over a provider's own facilities changes the fact that the end-user service is an information service. Consistent with the statutory analysis described previously, a provider of end-user wireline broadband Internet access service delivered over its own facilities provides the end-user the ''capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.'' The Commission believes that the end user is receiving an integrated package of transmission and information processing capabilities from the provider. It believes that the fact that the provider owns the transmission does nothing to change the nature of the service to the end-user. Accordingly, the Commission tentatively concludes that wireline broadband Internet access service provided over a provider's own facilities is an information service.

6. Additionally, as a logical extension of the determination that the provision of wireline broadband Internet access service over a provider's own facilities is an information service, the Commission tentatively concludes that the transmission component of the end-user wireline Internet access service provided over those facilities is ''telecommunications'' and not a ''telecommunications service.'' As stated previously, an entity provides ''telecommunications'' (as opposed to merely using telecommunications) when it both provides a transparent transmission path and it does not change the form or content of the information. The provision of telecommunications rises to the level of a ''telecommunications service'' under the Act when it is offered ''for a fee directly to the public.'' It seems as if a provider offering the service over its own facilities does not offer ''telecommunications'' to anyone, it merely uses telecommunications to provide end-users with wireline broadband Internet access services, which, for the reasons discussed previously, the Commission believes is an information service. Therefore, the Commission tentatively concludes that in the case where an entity combines transmission over its own facilities with its offering of wireline Internet access service, the classification of that input is telecommunications, and not a telecommunications service. It seeks comment on these tentative conclusions and the statutory analysis underlying them.

7. The Commission also seeks comment on the prior conclusion in the *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98–147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, 24029, para. 35 (1998)(63 FR 45140, August 24, 1998) that an entity is providing a ''telecommunications service'' to the extent that such entity provides only broadband transmission on a stand-alone basis, without a broadband Internet access service. Commenters should address what the appropriate statutory classification of broadband transmission should be when it is not coupled with the Internet access component. Commenters should also address whether the provision of wholesale xDSL transmission should be considered ''telecommunications'' or ''telecommunications service'' under the Act. If xDSL is being offered on a wholesale basis as an input to ISPs' information services, is it being offered ''directly to the public''? In this regard, commenters should discuss how judicial and Commission definitions of common carriage might apply, and address whether ISPs—as a class—might be interpreted as the ''public'' under the statutory definition of ''telecommunications service.'' Commenters should also discuss the circumstances under which owners of transmission facilities offer broadband transmission on a private carriage basis. Specifically, the Commission seeks comment on whether and how the Commission might regulate incumbent LEC provision of broadband to third-party ISPs as private carriage. Further, to the extent that a carrier continued to

offer xDSL transmission under tariff, would *all* xDSL transmission services offered by that carrier be deemed ''telecommunications services,'' or could certain xDSL services be concurrently offered through individually negotiated contracts as private carriage? Commenters should discuss both statutory and policy rationales in support of their suggested classification.

8. Although the Commission tentatively concludes that wireline broadband Internet access service is an information service, it asks parties to comment on whether it should be classified as something other than an information service. For example, is there anything about the self-provision of this service that alters the function provided to the end user such that the service should be classified as a telecommunications service? Alternatively, should it be classified as two separate services, both an information service and a telecommunications service? Should it instead be classified as a new kind of hybrid communications service, neither an information service nor a telecommunications service?

9. The Commission is also considering concurrently with this proceeding in the *Incumbent LEC Broadband Notice* (67 FR 1945, January 15, 2002) whether incumbent LECs that are dominant in the provision of local exchange and exchange access service should also be considered dominant when they provide broadband telecommunications services. In order to consider broadband issues in a consistent manner, the Commission asks parties to comment on whether issues raised in that proceeding have an impact on the statutory classifications considered in this proceeding.

10. The Commission also notes that the 1996 Act uses and defines the term ''advanced telecommunications capability'' in section 706. To date, the Commission has utilized this term for purposes of collecting data to measure the deployment of advanced telecommunications. It seeks comment on whether wireline broadband Internet access services should be classified as an ''advanced telecommunications capability.'' It seeks comment on the relevance, if any, that section 706 has to the issues raised in this proceeding.

11. *Regulatory Framework for Wireline Broadband Internet Access Services.* The NPRM also addresses the appropriate regulatory framework for wireline broadband Internet access services. The Commission seeks comment on what regulations, if any, should apply in the future if these broadband offerings are found to be information services subject to Title I of the Act. It also asks what regulatory requirements, if any, should attach to the transmission component of the information service. Specifically, the Commission seeks comment on the relevance of access and non-access obligations to providers of self-provisioned wireline broadband Internet access services and on how classifying wireline broadband Internet access services as Title I service will affect public safety and welfare obligations. In addition, the Commission seeks comment generally on the role of the states with respect to regulating wireline broadband Internet access services.

12. Access Safeguards. The Commission seeks comment on whether the *Computer Inquiry* requirements that are applicable to the transmission component of information services should be modified or eliminated, and whether such requirements are overly broad or under inclusive as applied to the nascent broadband market. Specifically, the NPRM contains specific questions addressing the necessity and usefulness of these requirements as applied to self-provisioned wireline broadband Internet access service, and seeks comment on whether it may be appropriate to impose alternative requirements to better address the technology and market characteristics of these services.

13. In responding to the questions raised in this part of the Notice, the Commission asks parties to comment with specificity upon whether the various goals articulated in the *Computer II* and *Computer III* inquiries are equally valid today. Parties should explain the basis for their conclusions, and also explain what other goals should be taken into account, given the significant changes in the technological and competitive landscapes. Further, it seeks comment on the analyses employed in the *Computer Inquiries,* including the factors the Commission relied upon in promulgating the *Computer II* and *III* regimes. Are those factors still relevant today? Should they be modified, or given less weight? Are there additional factors that should be taken into account today by the Commission as it considers whether to modify the Computer *II* and *III* regimes?

14. To the extent the Commission decides that none of the existing *Computer II/III* nondiscriminatory access obligations should apply to carriers providing wireline broadband Internet access services, it seeks comment on whether alternative access obligations should be applied. It notes that Internet Service Providers (ISPs) currently purchase transmission services under tariff to provide their own information services. Commenters should address how entities have used means other than those provided through the *Computer II/III* access requirements to acquire the transmission necessary to provide their information service offerings, including reliance on negotiated contractual arrangements. In addition, it seeks comment on how any proposed alternative regulatory or contractual access obligations might be priced in the context of a minimal regulatory Title I regime. For example, commenters should consider whether, under a new regulatory approach, self-provisioning wireline broadband providers should be required to do no more than make transmission available to competitors at market-based prices, or whether they should be required to make transmission available to competitors at commercially reasonable rates. Or, is some alternative set of pricing regulations preferable?

15. If a regulatory framework is necessary, parties should comment on how such a framework could reduce the regulatory burdens on wireline broadband providers while promoting the availability of broadband to both competitors and consumers. Such an approach might encourage market participants to deploy broadband networks more expeditiously and increase facilities-based competition. The Commission seeks comment on the benefits and costs, as well as concrete details of market-based approaches to broadband regulation, and encourages interested parties to offer other proposals designed to encourage the deployment of broadband. It also asks parties to comment on what the appropriate classification would be of any broadband transmission services required to be offered to independent ISPs. It also seeks comment on the applicability of sections 201 and 202 of the Act to any such stand-alone broadband offerings, and how those sections should inform any determination we may make about the pricing of broadband transmission provided to third parties.

16. The Commission asks parties to comment specifically on the incentives that the Commission would create were it to impose requirements other than the *Computer II/III* requirements on the provision of wireline broadband Internet access service. For example, were the Commission to modify or eliminate the requirements that the underlying transmission be made available to other ISPs on a nondiscriminatory basis, how would

this affect the deployment of broadband? How would competing ISPs that do not own transmission facilities obtain the inputs they need to provide competing broadband Internet access services? Would the removal of all unbundling requirements motivate incumbent LECs, including BOCs, to only provide broadband transmission as part of integrated information services in order to restrict its availability, or would there be countervailing reasons why carriers would still choose to provide high-speed transmission to other entities on a stand-alone basis? Will these incentives be affected to the extent that these broadband Internet access services begin replacing traditional telecommunications services? Commenters arguing that removal of the requirements will lead to a significant reduction in the availability of high-speed transmission to non-facilities-based ISPs should address with specificity why this situation cannot be addressed through private, unregulated contractual arrangements or other marketplace solutions. Alternatively, if the Commission were to continue to impose unbundling requirements only on incumbent LECs or BOCs, how would this affect their incentive to continue deploying new and innovative broadband information services?

17. Other Obligations. The Commission seeks comment on the extent to which other obligations might be affected by classifying wireline broadband Internet-access services as information services. It asks questions about the relevance of three basic public protection obligations of telecommunications service providers—(i) national security, (ii) network reliability, and (iii) consumer protection—to wireline broadband Internet-access services. It also asks how this classification may affect unbundling obligations pursuant to sections 251 and 252 of the Act.

18. It asks commenters to discuss how our tentative conclusion that wireline broadband Internet access service is an information service will affect the scope of the CALEA assistance capabilities that telecommunications carriers must offer to law enforcement authorities. *See Communications Assistance for Law Enforcement Act,* Report and Order, CC Docket No. 97–213, 14 FCC Rcd 16794, 16795–96, paras. 2–3 (1999). (64 FR 14834, March 29, 1999) Commenters should address what effect, if any, the USA PATRIOT Act of 2001 may have on an entity that provides information services. *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,* Pub. L. No. 107–56, 115 Stat. 272 (2001) (USA PATRIOT Act) (codified in scattered sections of 18 U.S.C., 47 U.S.C., 50 U.S.C.). (66 FR 63620, December 7, 2001) While section 222 of the USA PATRIOT Act states that ''nothing in this Act shall impose any additional technical obligation or requirement on a provider of wire or electronic communication service or other person to furnish facilities or technical assistance,'' commenters may wish to discuss how the expansion of surveillance authority to electronic communications under various provision of the USA PATRIOT Act might affect providers of wireline broadband Internet access service if these services were classified as information services. More generally, the Commission asks for comment on how designating wireline broadband Internet access service as an information service may affect other national security or emergency preparedness obligations applicable to service providers and their networks.

a. Second, commenters should discuss what role, if any, the Commission or its designees should have in ensuring the network reliability and interoperability of wireline broadband Internet access services. For telecommunications service providers, the Commission has found that network reliability is of paramount importance in any number of settings and, in particular, has directed the Network Reliability and Interoperability Council (NRIC) to explore and recommend measures that would enhance network reliability and interconnectivity. Commenters should address the costs and benefits of authorizing NRIC to make technical interconnectivity and interoperability recommendations with respect to wireline broadband Internet access service.

19. Third, commenters should address how classification of wireline broadband Internet access as an information service would affect existing consumer protection requirements. For instance, section 214 of the Communications Act limits the ability of a telecommunications carrier to unilaterally discontinue telecommunications service to customers. Commenters should address the extent to which it is appropriate or necessary to apply such a requirement to the provision of wireline broadband Internet access service if we classify such services as information services. Consistent with the Communications Act, the Commission restricts how telecommunications carriers use, disclose, and access customer proprietary network information derived from the provision of a telecommunications service (CPNI). Section 258 of the Act prohibits telecommunications carriers from changing consumers' carriers without prior consent. The Commission has also adopted truth-in-billing principles and guidelines to ensure that telephone bills provide consumers with information they may use to protect themselves from fraud and make informed choices in the competitive telecommunications marketplace. How would classification of wireline broadband Internet access service as an information service affect the applicability of these requirements? In addition, section 255 of the Act requires a provider of telecommunications service to ensure the service is accessible and usable by individuals with disabilities, if that is readily achievable. How would classification of wireline broadband Internet access service as an information service affect the applicability of such requirements? Similarly, section 201 of the Act contains obligations applicable to the furnishing of service and charges for ''communication service'' and section 202 makes it unlawful for a common carrier to unreasonably discriminate with regard to like ''communications service.'' How would our classification affect these obligations? Commenters should refer to specific sections of the Act when they are addressing these issues. Commenters should address whether these requirements are needed to protect the interests of consumers in the context of a minimally intrusive regulatory regime for wireline broadband Internet access service, and discuss whether, through intermodal competition for broadband services, there are adequate incentives absent additional regulation for providers of wireline broadband Internet access to protect consumers' varied interests.

20. Finally, the Commission seeks comment on the implications of its tentative conclusions for incumbent LECs' obligations to provide access to network elements under sections 251 and 252 of the Act. Because ''network element'' is defined under the Act as a ''facility or equipment used in the provision of a telecommunications service,'' how could an incumbent LEC provider of wireline broadband Internet access service over its own facilities be required to provide access to those facilities as ''network elements'' if those facilities are used by the incumbent LEC exclusively to provide information services? For example, what would be the implications for the Commission's line sharing and line splitting rules? See

47 CFR 51.319(h); *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order in CC Docket No. 98–147 and Fourth Report and Order in CC Docket No. 96–98, 14 FCC Rcd 20912 (1999). (65 FR 1331, January 10, 2000) If an incumbent LEC provider of wireline broadband Internet access service over its own facilities uses certain facilities to provide both information services and telecommunications services, to what extent would the LEC be required to provide access to such shared-use facilities as ''network elements?'' The Commission seeks comment on whether the Commission could compel the unbundling of network elements used in the provision of information services, pursuant to Title I or some other statutory authority. Does the Commission's Title I authority allow it to limit such obligations to certain types of providers, such as incumbent LECs, or would the Commission be required to adopt rules of general applicability under Title I? In addition, because section 251(c)(3) allows a requesting carrier to request access to network elements ''for the provision of a telecommunications service,'' would a provider be prohibited from using network elements pursuant to section 251 to provide wireline broadband Internet access service?

21. Impact on Federal and State Responsibilities. The Commission seeks comment generally on the role of the states with respect to wireline broadband Internet access services if the Commission were to find it to be appropriately classified as an information service under Title I of the Act. The Commission has previously found that when xDSL transmission is used to provide Internet access services, these services are interstate and, thus, subject to Commission jurisdiction. *See GTE Telephone Operating Cos., GTOC Tariff No. 1, GTE Transmittal No. 1148,* CC Docket No. 98–79, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998). It thus seeks comment on whether, and if so how, classification of wireline broadband Internet access service as an information service would affect the balance of responsibilities between the Commission and the states. It asks parties to comment on what they consider an appropriate role for the states in this area, taking into account both policy considerations and legal constraints, including any applicable limitations on delegations of authority to the states under Title I of the Act. Additionally, parties should comment on whether current state regulations, if any, should be preempted to any extent if the Commission were to find that wireline broadband Internet access service is appropriately classified under Title I of the Act. Parties should be specific in identifying such state regulations and in explaining how such regulations would interfere with the Commission's oversight under Title I. In addition, the NPRM notes that the Ninth Circuit Court of Appeals affirmed the Commission's authority to preempt state regulation of jurisdictionally mixed enhanced services. *California* v. *FCC,* 39 F.3d 919, 931–33 (9th Cir. 1994). Parties should address whether any such existing state laws are in fact subject to preemption under that decision.

Commenters should also address how the dual state-federal ratemaking framework might be affected by the regulatory classification of wireline broadband Internet access service as an information service. For instance, if wireline broadband Internet access service is an information service, how should joint and common costs of facilities used to provide both those services and telecommunications services be allocated under part 64.901 of the Commission's rules, 47 CFR 64.901? Should the Commission modify its current cost allocation rules, and, if so, how? Commenters should also address the implications for jurisdictional separations of the issues addressed in this proceeding. It specifically encourages state members of the Federal-State Joint Board on Separations (Separations Joint Board) to submit comments on the issues addressed previously.

21a. *Universal Service Obligations of All Providers of Broadband Internet Access.* The NPRM seeks comment on whether providers of broadband Internet access services provided over wireline and other platforms, including cable, wireless and satellite, should be required to contribute to universal service. In this proceeding, the Commission will continue to pursue and protect the core objectives of universal service, as reflected in our statutory mandates and in many of our precedents. It recognizes, however, that the manner in which it preserves and advances universal service will, of necessity, change as the market, technology and consumers needs and priorities change.

22. Universal service has historically been based on the assumption that consumers use the network for traditional voice-related services and that those voice services are provided over circuit-switched networks. As traditional services migrate to broadband platforms, the Commission needs to assess the implications for funding universal service and ask commenters to discuss how to sustain universal service in an evolving communications market. Any analysis must take into account the Commission's overarching objectives of preserving and advancing universal service, as directed by Congress. At the same time, however, it seeks to avoid policies that may skew the marketplace or overburden new service providers, so that they can continue to innovate and have incentives to deploy broadband infrastructure. The Commission seeks to further these objectives by exploring the following fundamental question: in an evolving telecommunications marketplace, should facilities-based broadband Internet access providers be required to contribute to support universal service and, if so, on what legal basis? This Notice explores this question by seeking comment on what universal service contribution obligations such providers of broadband Internet access should have as the telecommunications market evolves, and how any such obligations can be administered in an equitable and non-discriminatory manner.

23. This fundamental question is intertwined with issues raised in the separate *Universal Service Contribution Methodology* proceeding, which explores possible ways to reform our current methodology for assessing universal service contributions, and in particular whether to modify our present requirement that carriers be assessed based on end-user telecommunications revenues. *Federal-State Joint Board on Universal Service,* CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, Notice of Proposed Rulemaking, FCC 01–145 (rel. May 8, 2001) (*Universal Service Contribution Methodology*). (66 Fr 28718) Among other possible reforms, the Commission is considering assessing contributions based upon connections to a public network. *FCC Takes Next Step To Reform Universal Service Fund Contribution System,* CC Dockets Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, News Release, FCC 02–43 (rel. Feb. 14, 2002) (Contribution Methodology Further Notice). Although it seeks comment in this proceeding on the ways in which reform of the current contribution methodology might alter the analysis of the fundamental question described previously, the Commission leaves questions of whether to make

such a reform to the separate *Contribution Methodology* proceeding.

24. As discussed in greater detail further, this NPRM builds on the foundation established in the *Report to Congress* and seeks comment on how the Commission can continue to meet the goals of universal service in a changing marketplace where competing providers are deploying broadband Internet access. It specifically encourages state members of the Federal-State Joint Board on Universal Service to submit comments on the issues addressed further.

25. Section 254 of the Act codified the Commission's historic commitment to advancing universal service by ensuring the affordability and availability of telecommunications services for all Americans. Specifically, section 254 of the Act directed the Commission to reform its universal service systems by making them explicit and workable in an increasingly competitive market. Section 254 also instructed the Commission to collect contributions for the explicit universal service support mechanisms from telecommunications carriers that provide interstate telecommunications services and, if in the public interest, other providers of interstate telecommunications. Based on this statutory language, the Commission determined that universal service would be funded through contributions based on the interstate end-user telecommunications revenues of telecommunications carriers and certain other providers of telecommunications. Section 254(d) of the Act states ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute'' to universal service. As noted previously, section 3 of the Act defines a telecommunications carrier as ''any provider of telecommunications services * * *,'' and ''telecommunications service'' as the ''offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' In contrast, section 3 of the Act defines mere ''telecommunications'' as ''transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received.'' In the *First Report and Order,* the Commission interpreted this statutory language as imposing a mandatory contribution requirement on all telecommunications carriers that provide interstate telecommunications services.

Although section 254 falls within Title II of the Act, which generally applies to telecommunications carriers, the Commission has interpreted its reach to extend beyond telecommunications carriers. Specifically, section 254(d) of the Act provides the Commission the permissive authority to require ''[a]ny other provider of interstate telecommunications'' to contribute to universal service if required by the public interest. In the *First Report and Order,* the Commission exercised its permissive authority over certain other providers of interstate telecommunications under section 254(d). The Commission required entities that provide interstate telecommunications to end-users for a fee and payphone aggregators to contribute to universal service. This category of providers would include entities that lease excess telecommunications capacity to end-users on a private contractual basis. The Commission concluded that these providers, like telecommunications carriers, ''have built their businesses or part of their businesses on access to the [public switched telephone network], provide telecommunications in competition with common carriers, and their non-common carrier status results solely from the manner in which they have chosen to structure their operations.'' The Commission declined at that time to exercise its permissive authority over entities that provide telecommunications solely to meet their internal needs, because telecommunications ''do not comprise the core of [a self-provider's] business.'' The Commission noted that private network operators that serve only their internal needs do not lease excess capacity to end-users and do not charge end-users for use of their network.

26. Under existing rules and policies, telecommunications carriers providing telecommunications services, including broadband transmission services, are subject to contribution requirements. In particular, with respect to wireline telecommunications carriers, such carriers must contribute to the extent they provide broadband transmission services or other telecommunications services on a stand-alone basis to affiliated or unaffiliated Internet service providers (ISPs) or to end-users. Accordingly, those carriers must contribute based on the revenues associated with the telecommunications services. The Commission also has concluded that if a wireline telecommunications carrier offers wireline broadband Internet access to end-users for a single price, it must also contribute to universal service. In the *CPE/Enhanced Service Bundling Order,* the Commission addressed the question of ''how to allocate revenues when telecommunications services and CPE/enhanced services are offered as a bundled package, for purposes of calculating a carrier's universal service contribution.'' *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets,* CC Docket Nos. 96–61 and 98–183, Report and Order, 16 FCC Rcd 7418, 7445–46, para. 46 (2001). (66 FR 19398, April 16, 2001) The Commission concluded that, for universal service contribution purposes, the carrier may elect to report revenues from the bundle based on the unbundled telecommunications service or, if it cannot distinguish telecommunications service revenue from non-telecommunications service revenue, all revenues from the bundled offering. The Commission seeks comment on whether these requirements and their basis in our rules and precedents are appropriate and consistent with the tentative conclusions regarding the statutory classification of wireline broadband Internet access.

27. The Commission emphasizes that this proceeding does not change the mandatory obligations of telecommunications carriers that are currently required to contribute to universal service based on their provision of broadband services to affiliated or unaffiliated ISPs or end-users. To avoid any disruption to universal service funding during the pendency of this proceeding, the Commission continues to require all such carriers to make universal service contributions in the same manner required today, pending the effective date of a final Commission decision regarding the status of wireline broadband Internet access. It finds that the public interest is served by maintaining the status quo and ensuring that universal service contributions continue to be assessed and collected under current law without disruption.

28. ISPs that own no telecommunications facilities and lease transmission, such as T1 lines, from telecommunications carriers to transmit their information services, do not contribute directly to universal service, but they make indirect contributions through charges paid to the underlying telecommunications carrier providing

the leased telecommunications services. As discussed previously, the Commission concluded in the *Report to Congress* that facilities-based ISPs that provide no stand-alone telecommunications services could be required to contribute to universal service under its permissive authority, but the Commission declined to exercise its permissive authority at that time. Given the anticipated growth of broadband Internet access, and the growth of broadband Internet access provided by ISPs, the Commission believes it is now the appropriate occasion to investigate, among other things, the questions that remain unanswered by the *Report to Congress.* Specifically, it asks whether broadband Internet access providers that supply last-mile connectivity over their own facilities should be required to contribute to universal service based upon their self-provisioning of telecommunications.

29. In this NPRM, the Commission tentatively concludes that wireline broadband Internet access should be classified as an ''information service'' and that the transmission aspect of that service is ''telecommunications'' when the same entity provides the telecommunications input. Accordingly, it must examine how the regulatory status of wireline broadband Internet access might impact the current system of assessments and contributions to universal service. It invites commenters to discuss how this tentative conclusion will impact contributions to universal service under current revenues-based system. It also seeks comment on whether the Commission's current treatment of such services as bundled offerings of telecommunications services and information services for universal service contribution purposes continues to be appropriate or should be modified in some fashion. It also seeks comment on the impact on universal service implementation if it concludes instead that the transmission input is a telecommunications service, separate services (information service and telecommunications service), or a new hybrid communications service that is neither an information or telecommunications service. In addition, it asks commenters whether and under what circumstances the public interest would require it to exercise its permissive authority over wireline broadband Internet access providers that utilize their own transmission facilities to provide a broadband Internet access service if such a service were an information service with a telecommunications input. Commenters should identify the factors that the Commission should consider when deciding whether the public interest requires exercise of its permissive authority under section 254(d) over wireline broadband Internet access providers. Assuming the public interest supports exercise of permissive authority, the Commission's contribution policies must also be equitable and nondiscriminatory. Therefore, the Commission requests that commenters describe the competitive impact of contribution requirements in an evolving communications marketplace. It asks commenters generally to discuss whether either outcome, assessing or not assessing facilities-based wireline broadband Internet access providers, would be consistent with the requirement of section 254 that contributions be assessed on an equitable and nondiscriminatory basis. For example, should all facilities-based wireline broadband Internet access providers—both wireline telecommunications carriers and ISPs—be subject to the same contribution requirements? If wireline broadband Internet access providers that self-provision telecommunications inputs are required to contribute, would that be consistent with the goal suggested in the companion *Universal Service Contribution Methodology* proceeding of ensuring that relevant services are assessed only once for universal service purposes? Whenever possible, commenters should explain how the Commission may minimize the incentives/distortions created solely by the contribution requirements.

If the Commission chooses to revisit its conclusion that wireline broadband Internet access should be viewed, for universal service contribution purposes, as a bundled offering of a telecommunications service and an information service, should it decline to exercise its permissive authority over facilities-based providers of wireline broadband Internet access or simply modify the basis on which such providers contribute to universal service? For example, should facilities-based wireline broadband Internet access providers contribute based on all of their wireline broadband Internet access revenues, some fraction of those revenues, or some other amount? Commenters advocating that such providers of wireline broadband Internet access should contribute to universal service should discuss how to allocate revenues separately associated with the telecommunications or telecommunications service input from revenues associated with Internet access. As noted previously, in a separate proceeding, the Commission is seeking comment on a proposal to assess universal service contributions based on connections, rather than revenue. If the Commission were to adopt such a reform, how should it be implemented with respect to wireline broadband Internet access providers? In addition, how would the Commission implement such a reform if the Commission were to adopt a connection-based assessment methodology?

30. Broadband Internet access services may also be provided over other platforms, e.g., wireless, cable, and satellite. Those other platforms may be utilized to provide broadband Internet access services in direct competition with wireline broadband Internet access services. Thus, while this proceeding largely seeks comment on the classification and regulatory implications of wireline broadband Internet access, we also undertake a comprehensive review of the effects of the growth of broadband Internet access on universal service, regardless of platform. It therefore asks whether other facilities-based providers of broadband Internet access services may, as a legal matter, or should, as a policy matter, be required to contribute. For example, if other broadband Internet access services are determined in other proceedings to be information services with a telecommunications input, would the public interest require exercise of our permissive authority? The Commission requests that commenters identify factors that should be considered when deciding whether the public interest would be served by requiring other facilities-based providers of broadband Internet access to contribute. Commenters should discuss whether these factors differ from or are the same as those relevant for wireline broadband Internet access providers. It also seeks comment on what contribution obligations, if any, should apply if other broadband Internet access services are classified as something other than information services with a telecommunications input. Finally, it seeks comment on the implications for each commenter's analysis of a change in the assessment system from a revenue-based system to some other basis for assessment, such as a per-connection charge.

31. As the Commission stated in the *First Report and Order,* contribution policies should ''reduce[] the possibility that carriers with universal service obligations will compete directly with carriers without such obligations.''

Accordingly, commenters should address the competitive impact across broadband platforms, if any, created by the contribution requirements. Based on the Commission's understanding of today's communications market, wireline broadband Internet access providers may compete directly with cable, wireless and satellite operators that provide broadband Internet access services for end-user customers. Therefore, the Commission seeks comment on whether all facilities-based broadband Internet access providers should be subject to the same contribution obligations. What are the advantages and disadvantages of such an approach? In particular, to what extent is such broad assessment of universal service contributions on facilities-based broadband Internet access providers necessary to ensure that universal service mechanisms will satisfy the objectives of section 254? In addition, if the Commission were to adopt a connection-based assessment methodology, commenters should address how such a reform would be implemented.

32. Because section 254 of the Act requires the Commission to preserve and advance universal service to the extent possible, it must strive to understand changes in technology and the marketplace and anticipate their implications for universal service. The Commission asks commenters to describe how the growth of broadband Internet access services will impact current the universal service system and the Commission's ability to support universal service. For example, if broadband Internet access service providers increasingly provide broadband Internet access services over their own facilities, will that result in lost contribution revenues, and if so, how much? It also seeks comment on the implications of such developments if the Commission were to move to a per-connection-based assessment. Commenters should discuss the impact, if any, on the expected growth of broadband Internet access services if contributions were assessed on a per-connection or some other non-revenue-based system. Additionally, commenters should discuss whether they expect voice traffic to migrate to broadband Internet platforms. If so, commenters should address the potential impact of such migration on the Commission's ability to support universal service. Specifically, if voice traffic over broadband Internet platforms increases and traditional circuit-switched voice traffic decreases, how, if at all, will that impact the Commission's ability to support universal service in an equitable and non-discriminatory manner? Will migration lower or raise the cost of providing service? What, if any, will be the impact on the level of high-cost universal service support needed as voice traffic migrates from traditional circuit switched networks to broadband Internet platforms? For example, will costs of providing supported services in high-cost areas increase or decrease as migration occurs?

33. Section 254(k) of the Act prohibits telecommunications carriers from using services that are not competitive to subsidize services that are subject to competition. The Commission seeks comment on how this provision should be implemented for wireline broadband Internet access. Section 254(k) also requires that services supported by universal service bear no more than a reasonable share of joint and common costs of the facilities used to provide these services. Because information services do not currently fall within the definition of services supported by universal service, deeming wireline broadband Internet access to be an information service would mean that the Commission would have to ensure that the costs of the network are properly allocated between regulated Title II services and Title I information services to comply with this statutory mandate. It seeks comment on how it may ensure that services supported by universal service bear no more than a reasonable portion of the costs associated with facilities used to provide both supported services and unsupported Internet access. Specifically, the Commission invites commenters to address the general sufficiency of existing allocation rules and policies in a broadband environment and whether those rules should be modified in order to meet the requirements of section 254(k).

*Initial Regulatory Flexibility Analysis*

34. 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 a substantial number of small entities by the policies and rules proposed in this NPRM. 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 NPRM provided previously in Section V.B. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

35. In this proceeding, the Commission seeks comment on the appropriate classification and regulatory framework for wireline broadband Internet access services. It tentatively concludes that wireline broadband Internet access services—whether provided over a third party's facilities or self-provisioned facilities—are information services subject to regulation under Title I of the Act, and asks for comment on this tentative conclusion. The Commission has already sought comment on the regulatory classification for cable modem service, and this issue will be resolved in a separate proceeding. The Commission also addresses the appropriate regulatory framework for wireline broadband Internet access services. It seeks comment on what regulations should apply in the future if these broadband offerings are found to be information services subject to Title I of the Act. Specifically, the Commission examines implications of Title I classification for wireline broadband offerings for non-discriminatory access and other core communications policy objectives. In light of these objectives, it seeks comment on whether to modify or eliminate existing access obligations on providers of self-provisioned wireline broadband Internet access services. The Commission seeks comment on how this regulatory classification may impact other obligations, such as those associated with public safety and welfare. In addition, the Commission seeks comment generally on the role of the states with respect to regulating wireline broadband Internet access services. Finally, the Commission seeks comment broadly on whether facilities-based providers of broadband Internet access services provided over wireline and other platforms, including cable, wireless and satellite, should be required to contribute to universal service. For purposes of this NPRM, the Commission uses the term ''facilities-based'' to refer to providers of broadband Internet access services that furnish their own last-mile connection, irrespective of the transmission medium, to the customer.

Legal Basis

36. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4, 10, 201–202,

251, 252, 254, 271, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–202, 251, 252, 254, 271, 303, and 403, section 706 of the Telecommunications Act of 1996, and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

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

37. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. 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). Consistent with SBA's Office of Advocacy's view, we have included small incumbent LECs in this present RFA analysis. We emphasize, however, that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

38. *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 or small incumbent LECs 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 or small incumbent LECs that may be affected by the decisions and rules adopted in this NPRM.

39. Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers. Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers 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 on the Form 499–A. According to the Commission's most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 541 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, the Commission estimates that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this NPRM.

40. *Small Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. 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 local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

41. *Internet Service Providers.* Under the new NAICS codes, SBA has developed a small business size standard for ''On-line Information Services,'' NAICS Code 514191. According to SBA regulations, a small business under this category is one having annual receipts of $18 million or less. According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of $9,999,999 or less, and an additional 111 firms with annual receipts of $10,000,000 or more. Thus, the number of On-line Information Services firms that are small under the SBA's $18 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

42. *Satellite Service Carriers.* The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 21 carriers reported that they were engaged in the provision of satellite services. Of these 21 carriers, 16 reported that they have 1,500 or fewer employees and five reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of satellite service carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 21 or fewer satellite service carriers that may be affected by the rules.

43. *Wireless Service Providers.* The SBA has developed a definition for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the

SBA's definition. Consequently, it estimates that there are 989 or fewer small wireless service providers that may be affected by the rules.

44. *Cable Systems.* The Commission has developed, with SBA's approval, its own definition of small cable system operators. 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 companies 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, the Commission estimates that there are fewer than 1,439 small entity cable system operators that may be affected by the proposals.

45. 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% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, the Commission found 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 of its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we 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.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

46. Should the Commission decide that broadband Internet access services are information services with a telecommunications component and should the Commission decide to exercise its permissive contribution authority over certain facilities-based providers of such services, the associated rule changes potentially could modify the reporting and recordkeeping requirements of certain providers of interstate telecommunications regulated under the Communications Act. The Commission could potentially impose contribution requirements on certain facilities-based providers of interstate telecommunications that are not currently required to contribute. Accordingly, such entities would be required to comply with the relevant universal service reporting requirements. Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, the Commission cannot accurately estimate the cost of compliance by small providers of interstate telecommunications. In this NPRM we do not seek comment on the actual reporting requirements of entities required to contribute to universal service. Rather, we seek comment on whether specific entities should be required to contribute. In the related *Contribution Methodology Further Notice*, however, the Commission seeks comment on the frequency with which carriers should submit reports to the Universal Service Administrative Company (USAC), the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of the possible reforms. Entities, especially small businesses, are encouraged to quantify the costs and benefits of the reporting requirement proposals in that proceeding.

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

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

48. The overall objective of this proceeding is to establish an appropriate classification and regulatory framework for wireline broadband Internet access service. The Commission tentatively concludes that wireline broadband Internet access services are information services under the Act. If it classifies and regulates this service as an information service, providers of this service, including those providers that own transmission facilities, could be subject to minimal and/or reduced regulatory requirements. The Commission believes that this would have a positive economic impact on small entities to the extent that it avoids placing restrictions on their operations. The Commission also tentatively concludes that the transmission aspect of wireline broadband Internet access service is ''telecommunications'' under the Act as opposed to ''telecommunications service.'' As part of the regulatory framework we are examining, the Commission seeks comment on what regulatory requirements, if any, should attach to this telecommunications input. It asks whether the Commission should modify or eliminate the requirements in the Computer Inquiry framework for access to the telecommunications input. The Commission also explores the implications for other regulatory requirements, including public safety and welfare, if it were to modify the access obligations.

49. The Commission notes that the *Computer Inquiry* requirements are only applicable to the BOCs, which are not small entities, but that ISPs, including small ISP entities, may obtain access to the BOCs' network to provide broadband Internet access service pursuant to these requirements. Indeed, the Commission notes in the NPRM that ISPs currently purchase transmission services under tariff to provide their own information services. The NPRM asks parties to comment on alternative ways in which ISPs could acquire transmission necessary to provide their information service offerings if the Commission modifies or eliminates the current access requirements. Specifically, the Commission asks whether they can rely on negotiated contractual arrangements and how such arrangements could be priced. For purposes of this IRFA, we specifically seek comment from small entities on these issues, in particular, on the extent to which the use of alternative access arrangements could impact them economically. Similarly, the Commission also specifically seeks comment from all affected small entities regarding the incumbent LECs' obligations to provide access to network elements under sections 251 and 252 of the Act if it determines that the

provision of wireline broadband Internet access service over a provider's own facilities is an information service and that the transmission input is telecommunications and not a telecommunications service, including the extent to which these determinations would economically impact them. In addition, the Commission generally asks small entities to comment on these and any other issues that could have an economic impact on them.

As discussed previously, this NPRM does not seek comment on the reporting requirements or assessment methodology for contributors to universal service. However, the *Contribution Methodology Further Notice* seeks comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers. Wherever possible, the *Contribution Methodology Further Notice* seeks comment on how to reduce the administrative burden and cost of compliance for small telecommunications service providers. If certain facilities-based providers of interstate telecommunications are required to contribute to universal service and are not currently contributing, such requirements will result in a financial impact. The impact to small entities, however, is mitigated by the Commission's *de minimis* contribution exemption.

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

50. None.

**Ordering Clauses**

51. Accordingly, pursuant to the authority contained in sections 2, 4(i)–4(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–4(j), 201, 303(r), this NPRM IS *Adopted*.

52. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

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