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Dated: April 10, 2007.

**David M. Verhey,**

*Acting Assistant Secretary, Fish and Wildlife and Parks.*

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## FEDERAL COMMUNICATIONS COMMISSION

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

[WC Docket No. 07-38; FCC 07-17]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission requests comment about how it can continue to acquire the information it needs to develop and maintain appropriate broadband policies. In particular, it seeks comment on: How best to ensure that it receives sufficient information about the availability and deployment of broadband services nationwide, particularly in rural and other hard-to-serve areas; how it can improve the data about wireless broadband Internet access services that it currently collects on FCC Form 477; and whether it should modify the speed-tier information it currently collects. It also requests comment on how it can best collect information about subscribership to interconnected voice over Internet Protocol service, or VoIP.

**DATES:** Comments must be filed on or before June 15, 2007, and reply comments must be filed on or before July 16, 2007.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [fcc504@fcc.gov](mailto:fcc504@fcc.gov), phone: 202-418-0530, or TTY: 202-418-0432.

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

#### FOR FURTHER INFORMATION CONTACT:

Alan Feldman or Ellen Burton, Wireline Competition Bureau, Industry Analysis and Technology Division, 202-418-0940.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in WC Docket No. 07-38, released April 16, 2007. The complete text of this document, including attachments, 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. It is available on the Commission's Web site: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-17A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-17A1.pdf), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-17A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-17A1.doc), and [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-07-17A1.txt](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-17A1.txt). The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554, via Web site: <http://www.bcpweb.com> or phone: 800-378-3160. When ordering documents from BCPI please provide the appropriate FCC document number (in this case: FCC 07-17).

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 15, 2007 and reply comments on or before July 16, 2007. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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

• **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the

comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number (in this case: 07-38). Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

Filings may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Paper filings must be addressed to: Marlene H. Dortch, Secretary; Office of the Secretary; Federal Communications Commission.

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

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

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

• **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Comments filed in WC Docket No. 07-38 will be available for public inspection and copying during business hours at the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. They will also be available via the

Commission's ECFS: <http://www.fcc.gov/cgb/ecfs/>.

### Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

### Summary of the Notice of Proposed Rulemaking

#### I. Introduction

1. In this *NPRM*, the Commission seeks comment about how it can continue to acquire the information it needs to develop and maintain appropriate broadband policies. First, the *NPRM* seeks comment about how the Commission can best ensure that it receives sufficient information about the availability and deployment of broadband services nationwide, particularly in rural and other hard-to-serve areas, including tribal lands. Second, it seeks comment about how the Commission can improve the data about wireless broadband Internet access services that it currently collects on FCC Form 477. Third, it asks whether the Commission should modify the speed-tier information it currently collects. Fourth and finally, it seeks comment about how the Commission can best collect information about subscribership to interconnected voice over Internet Protocol (interconnected VoIP) service.

2. The *NPRM* specifically solicits comment about the balance between the burden of additional data collection and the benefits such information provides.

#### II. Background

3. To date, the Commission has based its analysis of nationwide broadband deployment on three sources of information: data submitted on FCC Form 477; public comment submitted in response to inquiries undertaken pursuant to Section 706(b) of the Telecommunications Act of 1996, Public Law 104-104; and ancillary information gathered by Commission staff from publicly available sources. The Commission adopted the Form 477 program in 2000, after concluding that the collected information would materially improve its ability to develop, evaluate, and revise policy regarding broadband deployment and

local telephone service competition, and provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers. Pursuant to the broadband portions of the Form 477, facilities-based providers of broadband connections list, by state, those Zip Codes in which they have at least one broadband subscriber. Reporting entities include incumbent and competitive local exchange carriers (LECs), cable companies, operators of terrestrial and satellite wireless facilities, municipalities, and any other facilities-based provider of broadband connections to end users.

4. The Commission significantly improved the Form 477 in 2004 by extending the data collection program for five years beyond its original sunset; eliminating reporting thresholds which effectively exempted small entities from reporting requirements; requiring more granular reporting of broadband data, *e.g.*, about services offered at speeds in excess of 200 kbps, about symmetric xDSL connections as distinguished from T-1/DS1 and other "traditional wireline" connections, and about power line connections; requiring technology-specific lists of Zip Codes; requiring cable companies to report, by state, the extent to which cable modem service is available to the households to whom they can provide cable TV service, and requiring incumbent LECs to report comparable information about their DSL connections; and adopting various other modifications. The Commission acknowledged that mobile broadband services differ in particular respects from fixed broadband services—noting that the end user of a mobile wireless broadband service must be within a mobile wireless broadband service coverage area to make use of the service, but may move around within and among coverage areas—and made provisions for such differences in the data collection. The Commission rejected suggestions to add to the Form 477 questions specifically about VoIP service, noting that only a very small portion of local telephone service was being provided by entities exclusively utilizing VoIP and that LECs may already include information about VoIP subscribers in their Form 477 filings.

5. Based in large part on analysis of Form 477 data, the Commission's various reports have demonstrated significant and steady progress in broadband deployment and availability nationwide. Reflecting such robust deployment statistics, the Commission's Section 706 reports have consistently concluded that broadband is being deployed nationwide in a reasonable and timely fashion.

6. A report issued by the United States Government Accountability Office (GAO), *Broadband Deployment Is Extensive throughout the United States, but It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas* (May 2006), reviews the strengths and weaknesses of available data about broadband availability, including FCC Form 477 data. The report concludes that, while broadband deployment is extensive nationwide, it remains very difficult to assess the extent of deployment gaps in rural areas. It recommends that, in order to develop a better understanding of the dynamics of broadband deployment and availability in rural areas particularly, the Commission should "develop information regarding the degree of cost and burden that would be associated with various options for improving the information about broadband deployment."

7. Mobile wireless services have developed rapidly since the Commission revised the Form 477 program in 2004, as nationwide mobile telephone operators Verizon Wireless, Sprint Nextel, and Cingular, and some regional wireless carriers such as Alltel, have expanded or initiated their deployment of Third Generation (or "3G") wireless networks based on the EV-DO and WCDMA/HSDPA standards.

8. Interconnected VoIP subscribership in the United States also appears to have grown rapidly. In a separate proceeding, the Commission has explained that the growth of interconnected VoIP services is one of the changing market conditions that are placing under significant strain the existing system to preserve and advance universal service, which is a fundamental goal of communications policy in the United States.

#### III. Discussion

9. Notwithstanding the robust statistics and the more granular broadband data that have been reported on FCC Form 477 beginning September 1, 2005, the Commission continues to consider the need to improve its data collection, particularly regarding data reflecting broadband deployment and availability in rural and other hard-to-serve areas, and also regarding subscribership to new broadband-enabled services such as interconnected VoIP service.

10. *Broadband Deployment Data.* In rural and other hard-to-serve areas, the Commission questions whether submission of simple Zip Code information such as that currently required by the Form 477 is sufficient to provide a truly accurate picture of the state of broadband deployment.

Wireline broadband service providers filing Form 477 are currently required to list those Zip Codes where they have at least one broadband subscriber. In sparsely populated rural Zip Codes this could mean that a given provider has just one broadband subscriber who is located in a small town or at some other location convenient to telephone or cable facilities. Broadband "availability" could be non-existent for that carrier's other customers located a few blocks or many miles away from that single customer. Ideally, information would be available about the choices that a customer faces on a house-by-house and business-by-business basis. The *NPRM* discusses several options that might move the Commission closer to that ideal.

11. *Wireless Broadband Data.* The Commission believes it should modify the Form 477 reporting instructions for wireless broadband providers in certain respects and seeks comment on how best to do so.

12. First, the Commission believes that it should modify the reporting instructions for terrestrial mobile wireless providers to solicit data that will enable the Commission to distinguish among the numbers of subscribers to month-to-month or longer term broadband Internet access packages and casual users. In the current Form 477, information about numbers and types of broadband connections is collected in Part I.A, where filers are directed to "[c]omplete Part I.A if you provide one or more lines or wireless channels in the state that connect end users to the Internet [at broadband speed]." However, the detailed reporting instructions for terrestrial mobile wireless providers are to "[r]eport the number of subscribers to broadband services provided over terrestrial mobile wireless facilities \* \* \*." More specifically, the instructions are to "report the number of end users whose mobile device, such as wireless modem laptop cards, smartphones, or handsets, are capable of sending or receiving data at speeds in excess of 200 kbps \* \* \*." The Commission finds that it is currently unable to determine from the reported data the number of subscribers who make regular use of a broadband Internet access service as part of their mobile service package. Moreover, the Commission believes the current instructions make it likely that more and more mobile voice service subscribers will be reported as mobile broadband subscribers merely by virtue of purchasing a broadband-capable handset, rather than a specific Internet plan.

13. The Commission has observed that many mobile data services are marketed primarily as an add-on to mobile voice service. These services include mobile data services that enable subscribers to send text and multimedia messages, download ringtones and games, and access other content on handsets, as well as mobile data services that enable subscribers to browse web sites customized for handsets. The Commission has discussed how mobile service subscribers who wish to browse web sites customized for handsets generally may choose a month-to-month plan that includes such browsing, and that some carriers also offer a casual usage plan. And the Commission has observed that, aside from handset-based applications, mobile wireless carriers offer month-to-month Internet access packages for data users who access the Internet through laptop computers or certain Personal Digital Assistants ("PDAs"), including mobile wireless Internet access packages for wireless broadband networks.

14. Based on these observations about various mobile wireless data services, the *NPRM* seeks comment on whether the Commission should revise the Form 477 instructions to require mobile wireless providers to report, separately, the number of month-to-month (or longer term) subscriptions to broadband Internet access service designed for wireless devices that have their own browsers ("full Internet browsing" for purposes of this *NPRM*), such as laptop computers and PDAs. The *NPRM* also asks whether the Commission should require mobile wireless providers to report, separately, the number of month-to-month (or longer term) subscriptions for broadband-speed browsing of customized-for-mobile web sites ("mobile web browsing" for purposes of this *NPRM*). Further, the *NPRM* seeks comment on whether the Commission should require mobile wireless providers to report, separately, the number of unique mobile voice service subscribers who are not month-to-month (or longer term) subscribers to an Internet access service, as discussed above, but who nevertheless made any news, music, video, or other entertainment downloads to the subscriber's handset at broadband speed during the month preceding the Form 477 reporting date (*i.e.*, during June, or during December). The *NPRM* seeks specific comment on whether the above-described delineations among types and levels of service are appropriate in light of market and technological factors. Commenters should explain how an alternative approach would ensure that

mobile voice service subscribers will not be reported as mobile broadband subscribers merely by virtue of purchasing a broadband-capable handset, rather than a specific Internet plan.

15. The *NPRM* also seeks comment about whether the Commission should modify any other parts of the Form 477 instructions for mobile wireless broadband providers. The current instructions direct these providers to include in their subscriber counts those end users "whose billing addresses are within the areas of terrestrial mobile wireless broadband availability \* \* \*." The idea behind this instruction is that end users should not be reported as broadband subscribers if they are not generally present in an area where mobile broadband service is available. While this may become less likely as wireless broadband networks are more extensively deployed, it appears that some voice service subscribers are reported as mobile broadband subscribers only because they have broadband-capable handsets and that this may include persons who do not reside (or work) where mobile broadband is available. However, the billing address for some business end users may not indicate where the broadband Internet access service is primarily used, *i.e.*, if a single corporate address is the billing address for subscriptions used by employees working in various areas. Therefore, the *NPRM* invites comments on how this particular instruction might be improved, while keeping in mind that the Commission does not want to count, as broadband subscribers, mobile voice service subscribers who have purchased a broadband-capable handset but not an Internet plan.

16. The *NPRM* also seeks comment about how the Commission could improve the Form 477 instructions for reporting the percentage of mobile wireless broadband subscribers who are residential end users. Experience with the current Form 477 suggests that mobile wireless broadband providers are not using comparable methodologies to estimate the residential percentage. In the latest aggregated Form 477 data, about 11 percent of mobile wireless broadband subscribers are reported as residential. This percentage may be low, since broadband-capable handsets are widely available and appear to be an increasingly popular consumer product. Therefore, the *NPRM* seeks comment on whether the Commission should modify the instructions for mobile wireless broadband providers to require that they report, as residential subscribers, all subscriptions that are not billed to a

corporate customer account, to a non-corporate business customer account, or to a government or institutional account. Would this modification result in more accurate estimates of residential end users than the Commission currently receives? Are there different modifications to the current reporting instructions that would yield even better estimates? Or, instead, should the Commission explicitly require providers to undertake special studies for this purpose?

17. Regarding wireless broadband Internet access services more generally, the *NPRM* invites comment in three areas. First, it asks whether, and how, the Commission could modify our Form 477 instructions to collect useful information about households and businesses who subscribe to commercially deployed community Wi-Fi broadband Internet access service, for primary use at the subscriber's residence or business location. Second, it specifically invites comment on whether the Commission should add a terrestrial portable (or nomadic) wireless broadband technology category to the Form 477. Adding this technology category could provide the Commission with an improved ability to monitor the development of terrestrial wireless broadband services, including services over WiMax infrastructures, which need not be used on a fixed basis but cannot be used while traveling at high speeds with signal handoff. Third, it seeks comment on whether the Commission needs to clarify how the Form 477 instructions apply to satellite broadband capabilities provided by carriers to enterprise customers who operate their own corporate networks.

18. *Speed Tiers*. The *NPRM* seeks comment on whether the Commission should refine the speed-tier information currently collected on Form 477 by splitting into two tiers the speed tier defined by information transfer rates greater than 200 kbps and less than 2.5 mbps. Specifically, would be appropriate to define the lower of the resulting two tiers by information transfer rates greater than 200 kbps and less than 1.0 mbps?

19. The *NPRM* asks whether the Commission should develop a higher or more varied measurement of broadband speed in the Form 477 program. Do the current speed-tier definitions enable the Commission to understand the evolving dynamics of the broadband marketplace as providers offer faster and faster connections? Would the Commission's understanding of the rapidly evolving broadband marketplace be enhanced if it raised the current minimum threshold for reporting the speed-tier information

specified on Form 477 (*i.e.*, greater than 200 kbps in both directions)? More generally, should the Commission's definition of broadband allow different upstream and downstream speeds? The *NPRM* also asks if the Commission should raise the current minimum threshold for reporting *any* connections on the Form 477 (*i.e.*, greater than 200 kbps in at least one direction, which is generally "downstream" to the end user)? Do services with downstream connection speeds only slightly greater than 200 kbps continue to be an important stepping stone for broadband adoption by households, including households in rural and other hard-to-serve areas?

20. The *NPRM* seeks comment on whether and how the Commission could establish a system whereby the Form 477 speed tiers would be automatically adjusted upwards over time to reflect technological advances. What information would the Commission need to design a meaningful system? Would the bandwidth requirements of particular services and applications provide useful guidance? The *NPRM* specifically invites comment on the extent to which there is general industry agreement on the bandwidth requirements of such regularly cited applications as distance learning, telemedicine, downloading of movies, latency-sensitive video services, and high definition TV. How should the Commission account for differences in the bandwidth requirements of particular applications across different delivery platforms (*e.g.*, high definition TV requires about half of a 6 MHz channel on a cable system using 264 QAM modulation and MPEG-2 compression encoding, but about half that bandwidth when MPEG-4 encoding is used)?

21. The *NPRM* asks whether broadband providers are placing their reported broadband connections into speed tiers in a consistent manner. It seeks comment on industry practices for matching advertised "up to" speeds with probable customer experience. The Commission also wishes to refresh the record on whether the Commission effectively could modify the Form 477 reporting instructions to require filers to categorize broadband connections by the download and upload speeds experienced by actual customers rather than the theoretical maximum that a given network can support or the particular service configuration allow. Are there existing, administratively workable industry standards or practices for measuring typical or actual speeds delivered to end users?

22. *Interconnected VoIP Subscribership Data*. At present, only some LECs include interconnected VoIP subscribers in the local telephone service information they report on Form 477. Interconnected VoIP service providers who are not LECs are not required to file Form 477. Therefore, the *NPRM* invites comment on how the Commission could modify the Form 477 to collect useful information about the number of interconnected VoIP service subscribers in service in the least burdensome manner. It specifically invites comment on whether collecting the following state-level information, from all retail and wholesale providers of interconnected VoIP service, would yield sufficient information for us to track deployment and adoption of VoIP service across the nation. The *NPRM* proposes requiring all retailers of interconnected VoIP service to report: (1) The number of interconnected VoIP subscribers in service for whom the filer is the service retailer, (2) the percentage of retail interconnected VoIP subscribers who are residential, as opposed to business, end users, and (3) the percentage of retail interconnected VoIP subscribers who receive that service over a broadband connection provided by the filer (or by the filer's affiliate). The *NPRM* also proposes requiring wholesalers of interconnected service to report the number of interconnected VoIP service subscribers the filer serves on a wholesale basis.

23. *Proposals for Refining Commission Analysis of Broadband Deployment and Availability*. The *NPRM* discusses several possible methods for increasing the Commission's understanding of broadband deployment and availability. Some approaches for increasing our understanding of broadband deployment place little or no additional burdens on data filers but may yield commensurately modest analytic benefits. Other approaches could yield a more detailed and dynamic understanding of broadband deployment, some of which could prove to be costly to data reporters or impractical. The *NPRM* seeks comment about whether, and how, data filers should be required to report information about the prices at which they offer broadband services. It seeks comment about the technical feasibility, costs and benefits of each of the approaches discussed below. In order to appropriately analyze the costs and benefits of each approach/proposal, the Commission seeks evidence that quantifies the costs of each alternative, including initial set up costs, recurring

direct costs and reasonably attributable indirect costs. Commenters should identify all costs with as much precision as they can and should identify and analyze the potential benefits that each approach yields. The Commission also invites commenters to suggest and to explain in detail alternative methods of data collection beyond those identified herein.

24. The Commission concluded in 2004 that the benefits to the policymaking process that derive from requiring all filers—including smaller entities that serve sparse populations over wide geographical areas—to report the same data outweigh the reporting burdens on new Form 477 filers (*i.e.*, entities required to file Form 477 once mandatory reporting thresholds were eliminated). The Commission recognized, however, the particular concerns about the reporting burdens of some smaller carriers, and consequently decided not to pursue at that time certain options similar to options about which this *NPRM* seeks comment. Therefore, this *NPRM* seeks comment on whether, if the Commission requires the submission of additional information, it should require all filers to report those data. The *NPRM* also invites comment on ways to mitigate the burden on smaller filers short of implementing reporting thresholds or other exemptions.

25. *Additional Analysis of Current Broadband Subscriber Data.* The *NPRM* first asks whether the Commission could more closely analyze the broadband subscriber data it currently collects to identify more precisely the areas where broadband is not available, particularly to households. For example, currently available data suggest that about 12 percent of 5-digit geographical Zip Codes have no providers of primarily residential, wired high-speed Internet access services delivered over “last mile” facilities the provider primarily owns. These Zip Codes contain about 2 percent of the U.S. population. Should the Commission simply identify such areas for further, individual study? For these identified areas, should it analyze the full range of competitive choices including deployed broadband infrastructure, service offerings in the marketplace, and service offering prices? How should the Commission conduct such studies? Do existing data sources available to the Commission, including the Form 477 data, allow it to study the needs of discrete communities of users, for example, Native Americans on tribal lands? Are there better and more fruitful ways to frame questions about Form 477 data in the context of

particular technologies utilized by broadband providers, for example, providers using satellite technology?

26. As the Commission considers the possible need for additional data, it remains vigilant for ways to use the data it has currently as effectively as possible. GAO worked with a state broadband alliance (ConnectKentucky) to use their data to troubleshoot Form 477 data regarding broadband availability in Kentucky. Based on its comparison analysis, GAO concluded that the Form 477 data “may overstate the availability and competitive deployment of nonsatellite broadband.” Should the Commission explore collaborations, such as the one between GAO and ConnectKentucky, to troubleshoot its own data or to prepare discrete state or region-specific reports? How feasible is this given related costs and company concerns about sharing confidential information with private/commercial third parties? Would information developed by collaboration with various third parties be consistent? Which states have public-private economic development or other initiatives that have developed comprehensive localized information about broadband availability? Where such information exists, can it be shared with the Commission? Where such information does not exist, are there plans to develop it? For example, might the ConnectKentucky approach be readily adaptable in other states? In sum, the *NPRM* invites comment regarding methods of analyzing currently available data that could provide better or more focused insights into the dynamics of broadband deployment and availability nationwide or in particular geographic regions, in connection with specific technologies, or with regards to the needs of discrete communities of users.

27. The *NPRM* seeks comment on ways to better utilize Zip Code data currently submitted by Form 477 filers. Would requiring filers to submit customer counts along with Zip Code lists facilitate better analysis of broadband availability/deployment in specific Zip Codes? The Commission is skeptical that analysis of customer totals submitted at the 5-digit level of aggregation could significantly increase our understanding of the dynamics of broadband availability and deployment, *i.e.*, because any methodology based on a 5-digit Zip Code aggregation will continue to yield results that do not accurately depict broadband availability in particular, localized areas within a Zip Code. Nevertheless, the *NPRM* seeks comment on whether such an approach could be fruitful. In particular, the

Commission seeks detailed comment regarding the costs as well as the benefits of such an approach. It asks commenting providers to provide projected costs and related analysis at a level of detail sufficient to support their assertions, as well as other relevant information. For example, what steps would providers have to implement to furnish this information per available network/system technology and personnel and other resources? Do the characteristics of particular technologies make counting subscribers by Zip Code problematic and, if so, are there useful substitute approaches for those technologies? The *NPRM* asks commenters to estimate separately the cost for an initial collection, which would presumably entail certain start-up costs, and the cost of subsequent collections, which might be able to realize certain efficiencies.

28. The *NPRM* invites comment on whether the Commission should require all broadband providers to report the number of residential customers served (in place of the current requirement to report the percentage of total broadband connections in service that are residential connections) and also the number of homes “passed” by their broadband-enabled infrastructure. Collecting both the number of residential customers served and the number of homes passed by each Form 477 filer’s broadband-enabled infrastructure could enable the Commission to calculate and compare consumer broadband uptake figures (*i.e.*, the ratio between adoption and availability). The *NPRM* seeks specific comment on how “passing” should be defined for this purpose, for each of the broadband technologies specified in the current Form 477, to enable us meaningfully to compare consumer uptake figures.

29. The *NPRM* asks generally whether there are other ways in which the Commission could make better use of the broadband data it currently collects on Form 477. For example, the semiannual report based on the Form 477 data includes tables showing how broadband Internet subscriber varies among 5-digit geographical Zip Codes based on population density and household incomes. The Commission is able to develop these tables because a commercial vendor has translated Census Bureau data (which is not collected by Zip Code) into Zip Code-level data for those particular variables (*i.e.*, population density and income). The *NPRM* invites commenters to identify, with specificity, comparable commercial products that translate, to the Zip Code level, Census Bureau

information about household education, race (including tribal lands), or disability status, so that the Commission might include in its semiannual report tables showing how broadband Internet subscribership varies among Zip Codes based on these demographic variables.

30. The *NPRM* also invites comment on whether the Commission's semiannual report should include figures about international broadband adoption, prices, or other measures that are developed by the Organization for Economic Cooperation and Development (OECD) or the International Telecommunications Union (ITU). It asks for comment about which such figures the Commission should include. Ideally, any such figures will be published regularly and will be based on comparable definitions, measurement standards, and reporting practices. The *NPRM* asks, in particular, if a regularly published, reliably comparable figure is available on the cost per bit in leading industrial nations (for both residential and business customers). More generally, how could the Commission conduct a regular analysis of broadband policies in other nations and how their regulatory policies have played out? The *NPRM* seeks specific comment on whether and how the Commission should present such an analysis, *e.g.*, either in its semiannual report or the less frequent Section 706 report.

31. *Subscribers per 9-digit Zip Code.* The *NPRM* seeks comment about whether the Commission should require Form 477 data filers to submit 9-digit Zip Codes and associated customer counts. A 9-digit level of geographic aggregation coupled with such customer information could provide more granular information about deployment than 5-digit information. Nevertheless, associated costs could be greater. The *NPRM* asks, specifically, whether current Form 477 filers, including any of their affiliates, or their marketing partners or agents maintain information about the end-user termination locations (*e.g.*, service addresses) of wired and fixed wireless broadband connections that includes the 9-digit Zip Codes of those locations—particularly information about residential end-user termination locations. If not, do Form 477 filers maintain billing address information at the 9-digit Zip Code level, and would such data be a sufficiently accurate proxy for service location? Do Form 477 filers typically maintain any other types of information that could be used to identify the 9-digit Zip Codes of end-user termination locations? The *NPRM* asks commenters to undertake the same kind of cost/

benefit analysis regarding 9-digit Zip Code data as discussed in the previous paragraphs, *i.e.*, by discussing costs associated with implementation and associated potential benefits. It also seeks comment about whether there is significant value associated with simply requiring data filers to report lists of 9-digit Zip Codes where they have at least one customer, but without requiring associated customer counts by Zip Code.

32. *Purchase of Commercial Databases or Services.* The *NPRM* seeks specific comment regarding the availability of commercial sources of broadband deployment data or data-processing programs that could augment or otherwise add value to the Commission's use of Form 477 data, or reduce the associated costs and other burdens imposed on reporting providers. What existing databases could the Commission combine productively with the current Form 477 data? Are such databases accurate, current, and national in scope? The *NPRM* asks, specifically, whether the online-search software, and associated databases, that many broadband providers have developed to allow households to check whether broadband service is available at their home telephone number, street address, or Zip Code can readily be adapted to provide localized broadband deployment information. Do data-processing or consulting companies exist whose operations or services could add value, or diminish associated collection burdens? For example, if (as discussed below) the Commission decides to require additional Zip Code information (9-digit codes) or subscriber information per Zip Code in connection with the current Form 477 program, would it be feasible and/or desirable for a data-processing company, rather than the provider itself, to add 5-digit or 9-digit Zip Codes to subscriber lists, and to identify the number of subscribers per Zip Code? Would there be economies of scope and scale to a region- or nationwide contract that would make such private assistance affordable to providers? Would such an approach raise special concerns about confidentially-submitted company information or consumer privacy, and how could such concerns be addressed? As the Commission seeks to understand more clearly the cost to providers of gathering and reporting additional broadband data, should it also explore engaging commercial data processors to conduct sample surveys and report sample information? Commenters are encouraged to carefully consider such

approaches to current data augmentation as well as ways to reduce associated burdens.

33. *Geocoded Information about Subscriber Locations.* The *NPRM* also seeks comment about non-Zip Code based approaches to using subscriber-based information to more precisely identify the geographic areas where broadband is deployed, such as requiring providers to report geocoded information (*e.g.*, latitude and longitude) for the premises of their subscribers. Requiring subscriber counts by Zip Code could prove to be the least costly and most feasible change to our Form 477 data collection, *i.e.*, to most efficiently produce additional information that would materially advance the Commission's understanding of broadband availability. Are there other, more exact and accurate means of attaining that goal? How would such a method of data collection operate? The *NPRM* encourages suggestions from commenters that envision a non-Zip Code based approach to data collection, particularly alternatives that would yield data that is at least as granular as 9-digit Zip Code data augmented with customer counts by Zip Code.

34. *Develop Automated System of Voluntary Reporting by Non-served Households.* The *NPRM* also seeks comment about the feasibility and value of implementing a voluntary self-reporting system by non-served households, patterned after the National Do-Not-Call Registry. Under this proposal, non-served households could identify themselves at a Commission-maintained electronic bulletin board (web page address) and/or telephone number call-in address where they would provide the limited information, *e.g.*, home address with (preferably 9-digit) Zip Code, and the wired or fixed wireless telephone number at that particular location, that is needed to identify the particular non-served location. Would such a system be an effective and efficient way to identify localized areas where broadband services are not available? Would the reported information be accurate or, for example, might potential subscribers not be aware of all broadband options available to them? Would such a system in fact enable the Commission and other governmental entities to focus (limited) government resources to encourage broadband availability more efficiently, *i.e.*, by targeting areas where there is evidence of actual demand for broadband services? The *NPRM* seeks comment on the costs and potential benefits of such a proposal.

35. *Broadband-enabled Service Territory Report by Provider.* Each of the previously discussed approaches relies on *broadband subscription* as a proxy for broadband availability. The approaches assume that, in Zip Codes where none or very few of the residents subscribe to broadband services, such services are unavailable, and vice versa. As GAO has found, while broadband infrastructure deployment is extensive, information about where subscribers are served may not depict with a high degree of accuracy the local deployment of broadband, especially in rural areas. Alternatively, the Commission could require data filers to report information about their customers and the broadband-enabled service territory—*i.e.*, the specific geographic area, which might include only parts of particular Zip Codes—where they offer and/or currently deploy broadband services, particularly residential services. By collecting and studying such data comparatively, the Commission could arrive at a far clearer understanding of the actual dynamics of broadband availability in discrete geographic areas and to different communities of users. The *NPRM* seeks comment about the need for and feasibility of requiring broadband providers to report information that delineates in detail the boundaries of their broadband-enabled service territories. What methodologies are available for developing such information? What requirements would the Commission need to specify to ensure that providers apply a methodology with enough uniformity to yield useful information? Terrestrial mobile wireless broadband service providers are currently required to report Zip Codes that best represent their coverage areas. Does this standard yield a sufficient level of detail about the deployment of those services? Are there alternate or additional reporting requirements that would provide more useful data on mobile wireless broadband deployment without imposing an undue burden on the providers? The *NPRM* asks commenters to undertake the same kind of cost/benefit analysis discussed earlier with respect to 5-digit and/or 9-digit Zip Code information, *i.e.*, by discussing costs associated with implementation and associated potential benefits.

36. While, at present, precise information about the boundaries of the localized areas where broadband is generally available might be difficult for certain broadband providers to gauge, results achieved by broadband mapping initiatives such as those in Kentucky and Wyoming suggest that the

difficulties are not insurmountable. For example, municipal cable systems and the Kentucky Cable Telecommunications Association (KCTA) are working with ConnectKentucky to map in fine detail (*e.g.*, street-by-street, and sometimes block-by-block) the boundaries of the areas where cable modem broadband is available. The Kentucky mapping initiative has identified localized areas of DSL broadband availability by obtaining, from at least some carriers, detailed location information (*i.e.*, latitude and longitude) for the carrier's DSL-enabled wire centers and remote terminals, and assuming that DSL service is available within a 13,200-foot (2.5-mile) radius around the DSL-enabled equipment. The Kentucky initiative has also collected detailed facilities information (*e.g.*, latitude and longitude of towers, type of antenna technology, whether coverage is omnidirectional or partial) from at least some commercial providers of wireless broadband service. Therefore, the Kentucky experience suggests that providers can delineate their areas of broadband deployment at much finer levels of detail than the Zip Code based data now collected on Form 477. The Commission is also aware that, in localized areas where broadband is generally available, site-specific factors may impede availability to individual households. What steps, if any, should the Commission take to enable providers to report broadband availability, not by subscriber proxy but by actual territory served (*e.g.*, a data collection or mapping system)?

37. The *NPRM* invites comment on whether this approach is feasible for tribal lands and how it could most effectively be implemented on tribal lands. As GAO found in its report *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands (January 2006)*, subscription to Internet-access services (of any speed) by Native American households on tribal lands is unknown because no federal survey has been designed to track this information. As GAO also found, the Commission's Form 477 data cannot be used to determine the number of residential Internet subscribers on tribal lands. The *NPRM* seeks specific comment on how the Commission can best measure broadband deployment/availability and adoption on tribal lands.

38. *Other Alternatives.* The *NPRM* asks whether there are other alternatives the Commission can explore to better identify the extent of broadband deployment in rural areas and tribal lands across the nation.

39. *Extrapolating Nationwide Competitive Conditions from Conditions in Representative Areas.* The *NPRM* invites comment on whether, even if more granular data cannot reasonably be collected across the entire country, it would be appropriate and feasible for the Commission to develop more accurate estimates of the competitive choices in representative urban, metropolitan, exurban, low-income, tribal, and rural areas and then use weighted extrapolation techniques to get a picture of nationwide competitive conditions. It asks whether detailed infrastructure deployment maps for representative areas could be developed, based on the location of municipal cable-system facilities and local exchange carrier DSLAMs, which would give a house-by-house picture of where those broadband infrastructures are deployed.

40. The *NPRM* seeks comment on whether the Commission should collect key demographic information (*e.g.*, income, education, race (including tribal status), and disability status) about households located in those parts of the representative areas in which cable modem or DSL infrastructures have been deployed, to illustrate the relationship between these factors and broadband adoption. Which demographic variables should the Commission measure? Does conducting meaningful analysis require demographic information about individual households? If it does, could the cable system and/or DSL service provider in the representative area provide that information? Alternatively, could the Commission effectively use publicly available Census Bureau detailed demographic information (which would not identify individual households)? In general, are there public sources of detailed demographic information for representative areas? Commenters who are aware of such sources should identify them with specificity and explain why they are appropriate to use.

41. The *NPRM* asks if the Commission should also collect income, education, and other demographic information about households located in the parts of the representative areas where broadband infrastructures have not been deployed, to illustrate the relationship between these factors and broadband deployment. Which demographic variables should the Commission measure? Could the cable system and DSL service provider (or the local exchange carrier, if DSL infrastructure has not been deployed) provide that information? Would it be more cost effective or appropriate to use

demographic information that is publicly available from the Census Bureau (which does not identify individual households)? Are there publicly available commercial sources of geographically detailed demographic data that the Commission could use? The *NPRM* asks commenters to identify such sources with specificity and to explain why they are appropriate to use.

42. The *NPRM* asks whether collecting detailed information about deployment of two broadband technologies (*i.e.*, cable modem and DSL) would be sufficient to inform broadband policy making. Are there any other broadband technologies for which it is feasible to develop a house-by-house picture of infrastructure deployment and key household demographic variables (*e.g.*, income, education, race (including tribal status), and disability status) in representative areas?

43. The *NPRM* invites specific comment on how the Commission should identify particular areas as representative areas, to ensure that weighted extrapolation techniques will provide a statistically accurate picture of nationwide competitive conditions. Is there at this time a known set of such representative areas? If not, what is the Census Bureau or other source of data that can be used to select specific areas to represent urban, metropolitan, exurban, low-income, tribal, and rural areas, respectively? The *NPRM* asks commenters to identify that data source, or sources, with specificity and to explain why the source is appropriate to use. Should the extent of broadband deployment in an area be taken into account in selecting the representative areas? If so, how should it be taken into account? As noted above, there is a detailed broadband deployment mapping initiative underway in Kentucky. While there are no tribal lands in Kentucky, would it be appropriate for the Commission to select Kentucky areas to represent each of the other types of areas (*i.e.*, urban, metropolitan, exurban, low-income, and rural)?

44. The *NPRM* asks for comment about how to select a representative area for tribal lands, in particular. As GAO has found, tribal lands vary dramatically in size, demographics, and location. GAO conducted interviews with 26 tribes and 12 Alaska regional native nonprofit organizations and visited 6 of the tribes that have taken action to improve their telecommunications. The *NPRM* seeks comment on whether, and why, a particular one of the six tribes would be an appropriate choice for the representative tribal lands area.

45. *Price, Broadband Availability, and Consumer Uptake.* The *NPRM* seeks comment on whether and how the Commission could collect price information that depicts competitive choice in representative areas. Would it be sufficient to collect price information only for cable modem and DSL service options? If so, should the Commission collect price information for the full range of cable modem and DSL service options in the representative areas? How should it treat the prices of introductory offers and bundled services? Should it calculate separate representative prices for residential and non-residential service offerings? How should it treat service offerings that appear both in advertisements for residential services and in advertisements for business services?

46. The *NPRM* also asks whether the Commission should modify Form 477 to collect price information from all entities that report broadband connections. What price information should it collect? Should it collect the price information at the Zip Code, state, regional, or national level? What would be an appropriate way to define a region for this purpose? Should the Commission require filers to estimate and report the cost of residential broadband services measured as price per bit?

47. The *NPRM* seeks specific comment on whether and how the Commission could provide a deeper understanding of the market for broadband services by collecting price information and comparing it to consumer uptake of broadband (*i.e.*, the ratio between adoption and deployment). Commenters should address how non-price variables found to be correlated with consumer broadband uptake (*e.g.*, income, education, race (including tribal lands), and disability status) should be incorporated into the comparison.

#### Procedural Matters

*Ex Parte Rules.* This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in

Section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

#### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's *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 above. 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**.

#### A. Need for, and Objectives of, the Proposed Rules

2. In the *NPRM*, the Commission seeks comment on various proposals that would deepen and refine its current understanding of broadband availability and deployment and its understanding of end user adoption of relatively new broadband-enabled services such as interconnected VoIP service. The Commission believes that a better understanding would assist it to adopt policies to promote the deployment of broadband services. At the same time, it recognizes that certain methods of collecting more precise data might impose burdens on small entities, and invites comment on ways to mitigate burdens on smaller entities. In this regard, the *NPRM* proposes many methods for collecting further data and analyzing current data that would impose little or no burden on small entities whatsoever.

#### B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the *NPRM* is contained in Sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications 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 Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

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

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by

the proposed rules. 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). As discussed in sections D and E below, many of the proposals contained in the *NPRM* would not impose any burden whatsoever on small entities. However, to the extent that other proposals contained in the *NPRM* might impact small entities, those possible entities are listed below. The Commission has perhaps been overbroad in the list of entities directly affected, below, in an effort to encourage comment.

5. As noted above, in addition to covering small businesses, the RFA covers small organizations. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

6. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

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

8. *Wireline Carriers and Service Providers*. We have included small incumbent local exchange carriers 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 local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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

10. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local*

*Service Providers.*" Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

11. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

12. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone

services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

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

15. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

16. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 104 carriers have reported that they are engaged in the provision of

prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

17. *800 and 800-Like Service Subscribers*. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

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

19. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there

were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

20. *Cellular Licensees*. The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.” Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 221 of these are small, under the SBA small business size standard. Thus, under this category and size standard, about half of firms can be considered small. This information is also included in the discussion of Wireless Telephony, below.

21. *Common Carrier Paging*. The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with

its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

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

**23. Wireless Telephony.** Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

**24. Broadband Personal Communications Service.** The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining "small entity" in the context of

broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

**25. Narrowband Personal Communications Services.** To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were

small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

**26. 220 MHz Radio Service—Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

**27. 220 MHz Radio Service—Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were

sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

28. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

29. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses

auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

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

31. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

32. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up

to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

33. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

34. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the

Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

35. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

36. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small

businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

37. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$13.5 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers. The license terms require the licensees to build their wireless facilities within ten years of the grant. As a result, more information on the licensees will become available in the year 2008, when the licensees are required to show the Commission that they have achieved substantial service as part of the application renewal process.

38. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no

more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

39. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

40. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

41. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small

if it has \$13.5 million or less in average annual receipts.

42. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

43. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.” For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

44. *Cable and OVS Operators.* 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.

45. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily

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

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

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

annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

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

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

estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

50. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

51. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users." The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

52. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily \* \* \* provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts. According to

Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

54. *Internet Publishing and Broadcasting.* "This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast." The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

55. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of \$23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer

Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under \$10 million, and an additional 403 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under \$10 million, and an additional 565 firms had receipts of between \$10 million and \$24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under \$10 million, and an additional 101 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

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

56. In the *NPRM*, many of the proposals to increase the Commission's understanding of broadband availability would impose no reporting, recordkeeping or other compliance requirements on small entities. However, the *NPRM* invites comment on several other proposals that would impose further reporting and recordkeeping requirements on current Form 477 filers. Specifically, the *NPRM* invites comment on whether current Form 477 filers should (1) report numbers of subscribers per 5-digit Zip Code, (2) report 9-digit Zip Codes where there is at least one subscriber or report numbers of subscribers per 9-digit Zip Code, (3) report geocoded information about subscriber locations, or (4) report information that delineates in detail the boundaries of their broadband-enabled service territories. The *NPRM* also seeks comment on whether the Commission should (1) refine the speed-tier information the Commission currently collects by splitting an existing speed tier into two; (2) require all broadband filers to report the number of residential customers served and also the number of homes "passed" by their broadband enabled infrastructure; (3) collect demographic information about households from filers located in representative areas; and (4) collect price information from filers in representative areas or from filers more

generally. In addition, the *NPRM* invites comment whether there are any alternatives not discussed in the *NPRM* that would also serve the objectives of the *NPRM*. The Commission invites comment on ways to mitigate the burden that might be imposed on small entities by proposals discussed in the *NPRM*. The Commission also invites comment on alternatives to these proposals that would meet the objectives of the *NPRM* but would impose lesser burdens on small entities.

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

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

58. From the outset, the *NPRM* invites comments on significant alternatives to improving data about broadband availability throughout the nation—particularly availability in rural and other hard-to-serve areas—that would impose no burden on small entities whatsoever. These alternatives ask whether the Commission would be able to meet its objectives by conducting further analysis of current data, conducting its own studies, or purchasing databases from other entities to supplement Commission data. The *NPRM* asks whether the Commission should simply identify for further, individual study those Zip Code areas where deployment appears to be particularly limited. The *NPRM* invites comment on whether the Commission might collaborate with state public-private economic development or other initiatives to supplement and refine Commission data. Furthermore, the *NPRM* invites comment whether it might purchase commercial databases or services that would provide data without imposing additional burdens on filers. Finally, the Commission inquires whether it might rely on a voluntary self-reporting system by non-served households, patterned after the National Do-Not-Call Registry, to identify localized areas where broadband services are not available. None of these

alternatives would impose burdens on small entities, but commenters are invited to comment on whether these alternatives would provide sufficient information for the Commission to assess whether it should institute new policies to encourage deployment of broadband services to rural and hard-to-serve areas.

59. With regard to proposals that would increase the reporting requirements of small entities, the *NPRM* invites comments on how these proposals might be tailored to mitigate the burden on smaller entities but nevertheless obtain data that would enable the Commission to determine whether subscribers in those territories have access to broadband services. As noted above, the *NPRM* invites comment on whether current Form 477 filers should (1) report numbers of subscribers per 5-digit Zip Code, (2) report 9-digit Zip Codes where there is at least one subscriber or report numbers of subscribers per 9-digit Zip Code, (3) report geocoded information about subscriber locations, or (4) report information that delineates in detail the boundaries of their broadband-enabled service territories. The *NPRM* also seeks comment on whether the Commission should (1) refine the speed-tier information the Commission currently collects by splitting an existing speed tier into two; (2) require all broadband filers to report the number of residential customers served and also the number of homes “passed” by their broadband enabled infrastructure; (3) collect demographic information about households from filers located in representative areas; and (4) collect price information from filers in representative areas or from filers more generally. To analyze the impact on small entities, the *NPRM* specifically asks whether entities maintain these types of information in billing or marketing databases and asks commenters to demonstrate the burden for the entities to collect and report this type of information. This information will assist the Commission in determining whether these various proposals would impose a significant economic impact on small entities. Commenters are invited to comment on whether there are alternative methods that would obtain the same information while lessening the economic impact on small entities.

60. The *NPRM* also invites comment on how we should modify the reporting requirements for wireless broadband providers and interconnected VoIP providers. Specifically, the *NPRM* invites comment on whether mobile wireless providers should (1) report the

number of month-to-month (or longer term) subscriptions to broadband Internet access service designed for full Internet browsing; (2) report the number of month-to-month (or longer term) subscriptions for broadband-speed browsing of customized-for-mobile web sites; and (3) report the number of unique mobile voice service subscribers who are not month-to-month subscribers to an Internet access service, but who nevertheless made any news, video, or other entertainment downloads to the subscriber’s handset at broadband speed during the month preceding the Form 477 reporting date. The *NPRM* also seeks comment on how to improve the reporting estimate of the percentage of mobile wireless broadband subscribers who are residential end users. In doing so, the *NPRM* specifically suggests and seeks comment on alternative methods for arriving at the best estimates of residential end users. Finally, the *NPRM* specifically invites comment on how to collect useful information about the number of interconnected VoIP subscribers in the least burdensome manner. This information will assist the Commission in determining whether these various proposals would impose a significant economic impact on small entities. Commenters are invited to comment on whether there are alternative methods that would obtain the same information while lessening the economic impact on small entities.

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

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

62. None.

#### **Ordering Clauses**

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 Communications 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 Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this *NPRM*, with all attachments, is adopted.

*It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of

this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2006-26339]

#### Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking submitted by Siemens VDO to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection." The petition requests that the agency add a dynamic automatic suppression option under the advanced air bag options for the 12-month CRABI infant test dummy analogous to that for the 3-year and 6-year-old dummies.

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#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
- II. The Petition
- III. Data Submission and NHTSA Analysis
  - A. Data Submission
  - B. Ex Parte Meeting With Siemens, Volkswagen and Audi
  - C. NHTSA Analysis
- IV. Conclusion

#### I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," specifies performance requirements for the protection of vehicle occupants in crashes (49 CFR 571.208). On May 12, 2000, we published an interim final rule that

amended FMVSS No. 208 to require advanced air bags (65 FR 30680; (Advanced Air Bag Rule). Among other things, the rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and amended FMVSS No. 208 to require that future air bags be designed to minimize such risk. The Advanced Air Bag Rule established a rigid barrier crash test with a 5th percentile adult female test dummy, as well as several low risk deployment and static suppression tests using a range of dummy sizes and a number of specified child restraint systems (CRSs).

The Advanced Air Bag Rule allows for passenger side compliance through any of three options. The first option, Low Risk Deployment (LRD), defines a reduced deployment strength for occupants in close proximity to the air bag. The second option suppresses the air bag when a child is present. The third option, Dynamic Automatic Suppression (DASS), senses the location of an occupant with respect to the air bag, interprets the occupant characteristics and movement, and determines whether or not to allow the air bag to deploy. Performance tests for determining compliance with the LRD and suppression options were specified in the Advanced Air Bag Rule. A performance test for determining compliance with the DASS option was not specified in the rule because at that time it was not known what technologies would be used to attempt to meet the DASS option.

The agency received multiple petitions for reconsideration to the Advanced Air Bag Rule. Petitioners raised a large number of concerns about the various test procedures in their written submissions. The agency then addressed each petition in a **Federal Register** notice published on December 18, 2001, and made a number of refinements to the test dummy positioning procedures in the barrier tests and the low risk deployment tests used in the Advanced Air Bag Rule (66 FR 65376).

The December 18, 2001 response to petitions for reconsiderations (66 FR 65383) stated that:

To address the risks posed by passenger air bags, the rule requires vehicles to either (1) have a passenger air bag that deploys in a low-risk manner to out-of-position occupants, (2) to have a feature that suppresses the air bag when a young child is present in a variety of positions, or (3) to have a feature that suppresses the air bag when a passenger is out-of-position (including in dynamic events). *The risk minimization requirements must be met separately for 1-year-old, 3-year-old and 6-*

*year-old children, and manufacturers may choose different options for these three classes of occupants [emphasis added]."*

In making this statement, the agency clarified that for each dummy type, the selected "risk minimization" strategy had to be met in full for each dummy. That is, it was not acceptable to comply with only the suppression strategy for an infant in a rear facing child restraint system (RFCRS) and the low risk deployment strategy for an infant in a forward facing child restraint system (FFCRS). This was further emphasized in letters responding to request for interpretation from TRW Automotive (TRW)<sup>1</sup> and International Electronics and Engineering (IEE)<sup>2</sup> in July and October of 2003, respectively. The IEE interpretation also indicated that "[m]anufacturers may not use suppression technology to ensure that there will be no air bag deployment in the indicant test if they are certifying to the low risk deployment test."

In both regulatory and non-regulatory environments the agency has discussed extensively its concern about the danger of air bag deployment in the presence of an infant in a RFCRS. It was for this reason that the infant low risk deployment certification option effectively requires a broader range of crash severities for which the air bag must deploy in a low risk manner.

#### II. The Petition

On August 20, 2003, Siemens VDO (Siemens) petitioned the agency to amend FMVSS No. 208 to add a DASS option under the advanced air bag options for the 12-month-old CRABI infant test dummy. This would be an option analogous to that provided for the 3-year-old and 6-year-old dummies in S21.3 and S23.3, respectively. Siemens stated that "including the DASS option with the 1-year-old (12-month-old) dummy could have a positive impact on motor vehicle safety by enabling the development and certification of advanced air bag suppression systems."

The petition stated that the lack of a DASS option (for infants) is limiting advanced air bag technologies for the following reasons:

1. Using a vision-based DASS system it is not possible, under *all circumstances*, [emphasis added] to distinguish between a 12-month-old child in a FFCRS with a sunshield or blanket and a 5th percentile female. The system would suppress the air bag and eliminate potential benefits to children older than 1-year and small adults.

<sup>1</sup> Docket Management System NHTSA-2003-15650.

<sup>2</sup> Docket Management System NHTSA-2003-16296.