

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

[WC Docket No. 05–25; RM–10593; FCC 12–153]

#### Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission continues the process of reviewing its special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. The Report and Order initiates a comprehensive data collection and specifies the nature of the data to be collected and the scope of respondents. An initial version of the data collection is attached to the Report and Order as an appendix; the Report and Order delegates authority to the Commission's Wireline Competition Bureau to review and modify the collection to implement the requirements of the Report and Order.

**DATES:** Effective March 12, 2013. The information collection and recordkeeping requirements contained in section III and appendix A of the document are not effective until they are approved by the Office of Management and Budget.

**FOR FURTHER INFORMATION CONTACT:** Jamie Susskind, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or (202) 418–0484 (TTY), or via email at [Jamie.Susskind@fcc.gov](mailto:Jamie.Susskind@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in WC Docket No. 05–25, RM–10593, FCC 12–153, adopted on December 11, 2012, and released on December 18, 2012. This summary should be read with its companion document, the Further Notice of Proposed Rulemaking (FNPRM) summary published elsewhere in this issue of the *Federal Register*. The summary is based on the public redacted version of the document, the full text of which is available electronically via the Electronic Comment Filing System at [\[fjallfoss.fcc.gov/ecfs/\]\(http://fjallfoss.fcc.gov/ecfs/\) or may be downloaded at \[http://hraunfoss.fcc.gov/edocs\\\_public/attachmatch/FCC-12-153A1.pdf\]\(http://hraunfoss.fcc.gov/edocs\_public/attachmatch/FCC-12-153A1.pdf\). The full text of this document is also available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternate formats for persons with disabilities \(e.g. Braille, large print, electronic files, audio format, etc.\) or reasonable accommodations for filing comments \(e.g. accessible format documents, sign language interpreters, CARTS, etc.\), send an email to \[fcc504@fcc.gov\]\(mailto:fcc504@fcc.gov\) or call the Commission's Consumer and Governmental Affairs Bureau at \(202\) 418–0530 \(voice\) or \(202\) 418–0432 \(TTY\).](http://</a></p>
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### I. Introduction

1. In the Report and Order and Further Notice of Proposed Rulemaking, we continue the process of reviewing our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. Specifically, we initiate a comprehensive data collection and seek comment on a proposal to use the data to evaluate competition in the market for special access services.

### II. Background

#### A. Price Cap Regulation

2. In 1991, the Commission implemented a system of price cap regulation by which the largest incumbent LECs (often referred to today as price cap LECs) establish their interstate access charges. Price cap regulation is a form of incentive regulation that seeks to “harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services.” In contrast to rate-of-return regulation, which preceded price cap regulation and focuses on an incumbent LEC's costs and fixes the profits an incumbent LEC may earn based on those costs, price cap regulation focuses primarily on the prices that an incumbent LEC may charge. The access charges of price cap LECs originally were set at levels based

on the rates that existed at the time the LECs entered the price cap regime. Increases in their rates have, however, been limited over the course of price cap regulation by the Price Cap Index (PCI) that is adjusted annually pursuant to formulae set forth in Part 61 of our rules.

3. The PCI is designed to limit the prices LECs charge for service. The PCI has three basic components: (1) A measure of inflation, *i.e.*, the Gross Domestic Product (chain weighted) Price Index (GDP–PI); (2) a productivity factor or “X-Factor,” which represents the amount by which LECs can be expected to outperform economy-wide productivity gains; and (3) adjustments to account for “exogenous” cost changes that are outside the LEC's control and not otherwise reflected in the PCI. The Commission's price cap formula permitted special access PCIs to increase by a measure of inflation, minus a productivity offset (the X-factor). The X-factor represented the amount by which LECs were expected to outperform economy-wide productivity gains.

#### B. Pricing Flexibility

4. Pursuant to the pro-competitive, deregulatory mandates of the 1996 Act, the Commission adopted the *Pricing Flexibility Order* in 1999 to ensure that the Commission's regulations did not unduly interfere with the operation of interstate access markets as competition developed. In that Order, the Commission developed competitive showing rules (also referred to as “triggers”) intended to measure whether market conditions in a given Metropolitan Statistical Area would warrant various levels of regulatory relief. To make a competitive showing, the Commission held that price cap LECs would need to demonstrate

either that (1) competitors unaffiliated with the incumbent LEC have established operational collocation arrangements in a certain percentage of the incumbent LEC's wire centers in an MSA, or (2) unaffiliated competitors have established operational collocation arrangements in wire centers accounting for a certain percentage of the incumbent LEC's revenues from the services in question in that MSA. In both cases, the incumbent also must show, with respect to each wire center, that at least one collocater is relying on transport facilities provided by a transport provider other than the incumbent LEC.

5. Under the rules, the Commission granted relief in two phases. Phase I relief, which required lower levels of collocation, gave price cap LECs the ability to lower their rates through contract tariffs and volume and term

discounts, but required that they maintain their generally available price cap-constrained tariff rates to “protect[ ] those customers that lack competitive alternatives.” Phase II relief, which required higher levels of collocation, permitted price cap LECs to raise or lower their rates throughout an area, unconstrained by price cap regulations included in the Commission’s part 61 and part 69 rules.

### C. The CALLS Order

6. In 2000, the Commission adopted the CALLS plan, a five-year interim, industry-proposed regime designed to move towards a more market-based approach to rate setting. The CALLS plan separated special access services into their own basket and applied a separate X-factor to that basket. The X-factor under the CALLS plan, unlike under prior price cap regimes, is not a productivity factor but “a transitional mechanism \* \* \* to lower rates for a specified time period for special access.” The CALLS X-factor for special access was 3.0 percent in 2000, and increased to 6.5 percent for 2001, 2002, and 2003. For the final year of the CALLS plan (July 1, 2004–June 30, 2005), the special access X-factor was set equal to inflation. As the Commission has yet to replace the interim CALLS plan X-factor, price cap LECs’ special access rates have remained frozen at 2003 levels (excluding any necessary exogenous cost adjustments).

### D. AT&T’s Petition for Rulemaking and 2005 Special Access NPRM

7. On October 15, 2002, AT&T Corp. filed a petition for rulemaking requesting that the Commission revoke the pricing flexibility rules and revisit the CALLS plan as it applies to special access services. AT&T contended both that the predictive judgment at the core of the *Pricing Flexibility Order* had not been confirmed by marketplace developments, and that BOC special access rates exceeded competitive levels and hence were unjust and unreasonable in violation of § 201 of the Communications Act. Because the predictive judgment had proven wrong, AT&T asserted, the Commission was compelled to revisit its pricing flexibility rules in a rulemaking proceeding. Price cap LECs countered that, among other things, their special access rates were reasonable and therefore lawful, that there was robust competition for special access services, that the collocation-based competitive showings were an accurate metric for competition, and that data relied upon

by AT&T were unreliable in the context used by AT&T.

8. On January 31, 2005, the Commission released the *Special Access NPRM*, which initiated a broad examination of what regulatory framework to apply to price cap LECs’ interstate special access services following the expiration of the CALLS plan, including whether to maintain or modify the Commission’s pricing flexibility rules. Moreover, the NPRM sought to examine whether the available marketplace data supported maintaining, modifying, or repealing these rules. It also responded to AT&T’s request for interim relief.

### E. Recent Actions in the Proceeding

#### 1. Competitive and Regulatory Developments

9. Numerous regulatory and competitive developments affected the special access market in the years following the release of the *Special Access NPRM*. In July 2007, the Commission sought comment in the record in light of subsequent industry consolidation, a Government Accountability Office (GAO) report on special access competition, and other competitive developments. Moreover, as a result of a series of forbearance proceedings, the scope of services affected by the *Special Access NPRM* narrowed considerably.

#### 2. Analytical Framework

10. In November 2009, the Commission’s Wireline Competition Bureau (Bureau) sought comment on the appropriate analytical framework for examining the issues that the *Special Access NPRM* raised. In July 2010, the Bureau held a staff workshop on the economics of special access to gather further input on the analytical framework issue.

#### 3. Voluntary Data Requests

11. In October 2010, the Bureau issued a public notice inviting the public to submit data on the presence of competitive special access facilities to assist the Commission in evaluating the issues that the *Special Access NPRM* raised. In September 2011, the Bureau issued a second public notice requesting the submission of competition and pricing data.

#### 4. Pricing Flexibility Suspension Order

12. On August 22, 2012, the Commission adopted an order that concluded that the special access pricing flexibility rules discussed above were not working as predicted and suspended the 90-day deadline for

granting a petition for pricing flexibility based on those flawed rules.

### III. Report and Order

13. In the Report and Order, we require providers and purchasers of special access service and certain other services to submit data, information and documents to allow the Commission to conduct a comprehensive evaluation of competition in the special access market.

#### A. Scope

14. In this section, we identify the scope of the data collection, the entities that must respond to the data collection, and the geographic areas and time periods for which they must respond.

15. A preliminary note on terminology: For purposes of the Report and Order and consistent with Commission precedent, we do not include mass market Internet access services (e.g., DSL or cable modem service) in our definition of special access. We use the term “location” to mean a building, other man-made structure, a cell site on a building, a free-standing cell site, or a cell site on some other man-made structure where the end user is connected, but is not a “node.” We use the term “node” to mean an aggregation point, a branch point, or a point of interconnection on a provider’s network, including a point of interconnection to other provider networks. “End user” means a business, institutional, or government entity that purchases dedicated service for its own purposes and does not resell such service. We use the term “connection” to mean a wired “line” or wireless “channel” that provides a dedicated communication path between an end user’s location and the first node on a provider’s network. Examples include LEC central offices, remote terminal locations, splice points (including, for example, at manholes), controlled environmental vaults, cable system headends, cable modem termination system (CMTS) locations, and facility hubs. We use the terms “bandwidth” and “capacity” interchangeably.

16. *Services Covered.* Traditionally, federal antitrust agencies have begun competitive analyses in a variety of contexts by defining relevant product and geographic markets. As noted in the Further Notice, however, these agencies have more recently noted that “analysis need not start with market definition \* \* \* although evaluation of competitive alternatives available to customers is always necessary at some point in the analysis.” In particular, “[e]vidence of competitive effects can inform market definition, just as market

definition can be informative regarding competitive effects.”

17. Taking these considerations into account, we collect information on the full array of traditional special access services, including DS1s and DS3s, and packet-based dedicated services such as Ethernet. Further, although there is little disagreement in the record as to the definition of special access services, and that as traditionally defined they do not include mass market Internet access services, there is some question as to whether the relevant product market should encompass not only special access services but other high-capacity data services targeted at enterprise customers. Some commenters have argued that best efforts broadband Internet access services—even when marketed to small- to medium-sized business customers—are not part of the relevant product market. These commenters note, among other things, that prices for best efforts services differ substantially from special access services for comparable bandwidth. Others have argued that best efforts services are often marketed with express comparisons to special access services, and therefore the Commission should collect data on both.

18. We need not resolve the market-definition issue here—for purposes of this data collection, we conclude it is best to simply take a broad approach. To ensure that we collect data on services that enterprise customers may view as substitutable, we define the scope of our data collection to include best efforts business broadband Internet access services, which we define as best efforts Internet access data services with a capacity equal to or greater than a DS1 connection that are marketed to enterprise customers (including small, medium, and large businesses, as well as existing special access customers). As described below, we structure the collection somewhat differently for best efforts and special access services to minimize the burden on submitters consistent with our data requirements and taking into consideration data that the Commission already has available to it.

19. We also note that we intend to collect data on intrastate special access services and special access services offered via a state-level tariff or state-approved contract. Doing so is necessary to ensure that we have a clear picture of all competition in the marketplace.

20. *Providers and purchasers that must respond.* In order to conduct a comprehensive analysis of the special access market, we will collect data from all providers and purchasers of special access services as well as some entities

that provide best efforts business broadband Internet access services. By “providers,” we mean any entity subject to the Commission’s jurisdiction under the Communications Act, as amended, that provides special access services or provides a connection that is capable of providing special access services. By “purchasers,” we mean any entity subject to the Commission’s jurisdiction under the Communications Act, as amended, that purchases special access services.

21. To clarify our terminology, we note that some providers are “competitive providers,” by which we mean a competitive local exchange carrier (CLEC), interexchange carrier, cable operator, wireless provider or any other provider that is not an incumbent LEC operating within its incumbent service territory. We also note that a rate-of-return carrier, which is not subject to our pricing flexibility rules, shall not be considered a “provider” to the extent it provides special access within its rate-of-return service area. This exemption does not apply to services not regulated on a rate-of-return basis or provided outside a rate-of-return carrier’s service area by itself or an affiliate.

22. We note concerns regarding the burden that this data collection will impose on small companies, and are mindful of the importance of seeking to reduce information collection burdens for small business concerns, and in particular those “with fewer than 25 employees.” Any effort to lessen the burdens of this information collection on small companies must be balanced against our goal of obtaining the most accurate and useful data possible. Competition in the provision of special access appears to occur at a very granular level—perhaps as low as the building/tower. A provider that owns 50 of its own channel terminations to end users may not be competitively significant within an area as large as an MSA, but could be a significant competitor within smaller areas, such as zip code areas. Therefore, we believe it necessary to obtain data from special access providers and purchasers of all sizes, but we shall not require entities with fewer than 15,000 customers and fewer than 1,500 business broadband customers to provide data regarding their best efforts business broadband Internet access services. As some commenters have urged us to do, this approach will incorporate data and information from nascent technologies, such as WISPs.

23. *Geographic scope.* With some exceptions, we will collect data on a nationwide basis to ensure the most

comprehensive and accurate assessment of competition in markets for special access services subject to our pricing flexibility rules. Because the focus of this proceeding is on the regulation of special access services in price-cap territories, we will not require data from any provider with regard to its operations in any geographic area in which a rate-of-return carrier is the incumbent, as such carriers are not subject to the pricing flexibility rules. Moreover, we will not require a purchaser to produce data based on purchases it makes in those areas in which a rate-of-return carrier is the incumbent. If, however, a provider or purchaser prefers to provide data for all areas without distinguishing between areas served by price cap LECs and rate-of-return LECs, it may do so.

24. We considered whether we could reduce the burden of this data collection by collecting all of our data from a sample of locations (e.g., business locations and wireless towers) and/or larger geographic areas. However, we decline to adopt a sampling approach because we believe that the process of identifying and collecting a representative sample would be unlikely to substantially reduce provider burdens, and could significantly lengthen the data collection process. With respect to a sample of geographic regions, it is very difficult to design a representative sample without coming close to covering the entire country—a fact that minimizes the likelihood that a geographic sample would actually reduce the burden on respondents. Further, respondents likely would be required to search multiple databases and compare the results of those searches to determine which of their customer locations were in the selected geographies, resulting in substantial setup costs. Finally, even where a respondent need only consult a single database, it typically would have to engage in essentially the same, or greater (to account for the geographic sample), amount of coding to “pull” a sample of records as it would if it pulled all records.

25. A methodology based on sampling specific locations suffers from the same database and coding issues as geographic sampling, and further would likely lengthen the data collection process by a significant margin. Although the most recent data we have are several years old, they suggest that competitive providers may serve a relatively small proportion of all locations that have special access. As a result, a random sample from all locations would need to be very large—

perhaps approaching a census—to obtain sufficient data on competitive providers. Alternatively, we could require all respondents to identify all the relevant locations so that a smaller sample could be drawn from that census in a scientific way. That approach likely would lengthen the data collection process because it would require two collections to be conducted sequentially: First a census of served locations from which a sample could be drawn, and then a subsequent issuing of questions about locations in the sample. It would also fail to significantly reduce the overall burden for several reasons. First, the burden of producing the census would be similar to, though perhaps lower than, the burden of producing the information identified above. Second, because of the need to tie sampled locations to the relevant databases, the effort to respond to questions about a sample of locations would, for many respondents, raise, or at least not reduce, their burden. Third, while the costs in burden saved through sampling are likely to be relatively small, the statistical error of any conclusions based on a sample could be significantly higher than conclusions based on a census.

26. We do choose to sample for the narrower purpose of seeking to understand the evolution of competitive provider buildout of a connection to a specific end user's location. Such an analysis requires facilities deployment data over a long period of time, which would be burdensome for many providers to produce for their entire networks. By collecting this data in a representative sample of geographic areas, it is possible to minimize the burden on providers while providing accurate and useful data on this narrow aspect of providers' behavior. The decision to sample for this narrow purpose does not suffer from the same issues discussed above. First, the sample can be significantly smaller than would be necessary for a more general analysis. Second, the sample will be drawn from the universe of locations identified in the course of the larger data collection; this sequential collection is unlikely to materially impact our ability to undertake the proposed analysis. Finally, the information to be produced from the sample is limited to facilities deployment data.

27. *Temporal scope.* We will collect the majority of the data for calendar years 2010 and 2012. We find that collecting data on these issues for two calendar years appropriately balances the need for time series data with the burden of producing data for multiple

years. We choose calendar year 2012 because it is the most recent calendar year for which data will be available once Paperwork Reduction Act approval is obtained for the information collection adopted in this order. And by collecting 2012 data, the Commission will obtain the most up-to-date data available while still providing respondents a reasonable time to gather and submit their data. We choose calendar year 2010 because, while we recognize that it likely is more burdensome to produce 2010 data than 2011 data, a two year period between observations is more likely to include changes in the relevant variables than a one year period. We also recognize that our second voluntary data request sought data for 2010, which will mean those providers who responded to that request will be able to rely on their past efforts in responding to some elements of this collection.

28. We will collect two years' worth of data for market structure, price, and demand (*i.e.*, observed sales and purchases). This allows for an analysis that controls for factors that may vary widely across geographic areas, but not within a given geographic area (*e.g.*, entry factors such as building codes or soil quality). For example, if we observe differences in deployment between different geographies, these may be due to differences in factors such as building codes, climate, or soil quality. Controlling for these can be challenging. However, these kinds of variables do not typically change significantly over a few years. In contrast, observing differences in deployment that emerge over a few years within the same geographic region permits an analysis that controls for such factors. Conversely, if we have only one year's worth of data, we will be less able to associate particular factors with levels of deployment.

29. Most importantly, collecting a time series of data will help us assess potential competition. One way to assess potential competition is by obtaining structural, pricing, and demand data over a two-year period to observe and better understand how and why competition has evolved over time and, therefore, where potential competition exists. Our proposal to collect historical data, which could be used to predict potential competition, is consistent with Commission precedent, as well as that of the U.S. antitrust agencies.

#### *B. Nature of Data To Be Collected*

30. The data, information, and documents required to conduct a robust analysis of special access competition fall into five general categories: Market

structure, pricing, demand (*i.e.*, observed sales and purchases), terms and conditions, and competition and pricing decisions. In this section, we describe the nature of the data to be collected. Further, we include in Appendix C an initial version of the data collection that incorporates the data, information, and documents we describe below. We direct the Bureau to review and modify this collection, consistent with the authority delegated in section III.D below, to implement the requirements of this Report and Order.

31. *Market structure data.* We intend to assess the market structure for special access market(s). By this, we mean that we intend to examine comprehensive data on the situs and type of facilities capable of providing special access, by sold and potential capacity and ownership, and the proximity of such facilities to sources of demand. Specifically, we require each provider to submit data and information for connections that are owned by the provider, leased under an indefeasible right of use (IRU), or, for competitive providers, obtained from an incumbent LEC as an unbundled network element (UNE) to provide a dedicated service, including, but not limited to:

- Locations to which the provider has sold a connection to an end user or a provider;
- Information on the nature of the location and the nature of the connection serving that location, including:
  - The situs of the location and whether the location is a building, other free-standing site, cell site on a building, or free-standing cell site;
  - Whether the connection is fiber, wireless (and if wireless, the provisioned bandwidth of the channel), or some other medium; and
  - The provisioned bandwidth of each type of connection.

32. We require incumbent LEC providers to submit data concerning the number, nature, and situs of UNEs sold.

33. We require competitive providers to submit detailed information related to non-price factors that may impact where special access providers build facilities or expand their network via UNEs. For example, providers may choose to expand their facilities in areas where they have already made significant facilities investments, like near their headquarters or a point of interconnection, to take advantage of cost efficiencies. We therefore require respondents to provide detailed information about such non-price factors. In addition, we require competitive providers to provide us with any business rules they use to

determine whether to build a connection to a location.

34. In addition, we require competitive providers to submit the history of their facilities deployment in a sample of locations served by a competitive provider. Each competitive provider will report the date on which it provided a connection to each of its locations within the sample and locations proximate to the locations in the sample, including when and where it relied upon UNEs to establish a connection. The locations selected will include areas in which no pricing flexibility has been granted, as well as Phase I and/or Phase II pricing flexibility areas. These detailed data on the evolution of competitive provider networks will help us understand how competitive facilities are deployed over time and whether the presence of competitive facilities in fact provides a threat of competitive entry in nearby or adjacent areas.

35. We require competitive providers to provide detailed collocation situs information. We also require competitive providers to submit maps of the routes followed by fiber that they own or lease subject to an IRU, of nodes that interconnect with third party networks, and of connections from their networks to locations. These maps will indicate where competitive providers can provide, or could potentially provide, special access services. Among other things, such maps will identify points of interconnection between competitive providers of special access services and incumbent LEC facilities.

36. *Price data.* We require price data to characterize competition in the market for special access services. Such data will allow comparisons of different providers' prices, after controlling, where necessary, for differences in cost-causing factors, and can allow the consideration of the effect of market structure on price. Price data include, but are not limited to:

- The quantities sold and prices charged for special access services, by circuit element;
  - As reflected in billing data;
  - Including, where applicable and necessary, but not limited to, identifiers for the nature of the service, such as:
    - Universal Service Order Code (USOC) or comparable code;
    - Circuit and/or mileage end-points;
    - Quantities relevant for billing (such as bandwidth and mileage);
    - Term, volume, or revenue commitments relevant to billing; and
    - Adjustments, rebates, or true-ups provided or received over time.

The Bureau collected similar data on a voluntary basis in the *Special Access Facilities Data Public Notice*.

37. To understand this pricing information, we must also take into account the regulatory environment. For competitive providers, we already know the regulatory environment—they are unregulated with respect to price at the federal level. In contrast, the Commission regulates the prices incumbent LECs charge through a variety of methods: rate-of-return regulation, price-cap regulation, and Phases I and II of pricing flexibility. We therefore require incumbent LECs to list the form of price regulation that applies to their interstate special access services on a wire-center-by-wire-center basis.

38. *Demand data (i.e., observed sales and purchases).* Demand data are a key input into any statistical analysis of how price varies with competition. Competitors generally are attracted to areas of high demand density because such areas provide opportunities to enjoy economies of scale and scope. Consequently, an understanding of the relationship between prices for observed sales and purchases and competitive entry will facilitate an assessment of market power. In addition, the record indicates that competition in the provision of special access appears to occur at a very granular level—perhaps as low as the building/tower or a floor of a building. We therefore need to understand observed sales or purchases of special access at the most granular level possible, because, among other things, sold or purchased volumes and volume density are a key driver of special access costs and an important determinant of the likelihood of potential entry. We therefore will collect, including but not limited to, data that identify:

- The bandwidth of the special access services sold or purchased;
- The location(s) being served;
- The nature of the demand (e.g., provider, end user, other);
- The locations of mobile wireless providers' cell sites and connections to those cell sites;
  - Total expenditures on special access services by purchasers; and
  - Revenues earned from the sales of special access.

39. *Terms and conditions data and information.* The record reflects questions about whether the terms and conditions associated with the sale of special access services may inhibit a buyer's ability to switch to other providers, which in turn may inhibit facilities-based entry into special access markets. We therefore will collect, from providers and purchasers of special

access services, data and information that includes but is not limited to:

- Generally available plans for tariffed special access services that offer discounts, circuit portability, or other competitively relevant benefits;
  - The business rationale for those plans;
  - The extent of special access sales and purchases made that are and are not subject to discounts, circuit portability, or other benefits;
  - How such plans work with each other, and in conjunction with contract-based tariffs and other forms of contracts that govern the sale and pricing of special access services;
  - Customer information associated with such plans and contract-based tariffs (e.g., the number of customers subscribed to an individual plan or contract-based tariff);
  - How discounts, circuit portability, and other competitively relevant benefits for sales of special access services by competitive providers differ from those of the incumbent LEC providers;
  - Contract-based tariffs;
  - Provider policies and internal procedures governing deployment, disconnection, upgrades, and switching providers;
  - The impact certain terms and conditions may have on a purchaser's ability to reduce purchases from its existing provider, switch providers, or purchase unregulated services;
  - Generally available tariffs, contract-based tariffs, and other forms of contracts that govern the sale and pricing of special access services and services that are sold (or priced) in connection with special access services; and
  - A description of the customers targeted by providers (e.g., size, geographic scope, type) and the promotional and advertising strategies for winning or retaining such customers.

40. *Competition and pricing decision data, information and documents.* We require providers of special access to submit data, information and/or documents related to competition and pricing decisions for special access services, including selected competitive provider responses to Requests for Proposals (RFPs).

41. Specifically, we require each competitive provider to identify the five most recent RFPs for which it was selected as the winning bidder to provide each of the following: (i) Best effort business broadband Internet access services, (ii) special access services, and, to the extent different from (i) or (ii), and (iii) some other form of high-capacity data services to

business customers. We also require each competitive provider to identify the five largest (by number of connections) RFPs for which it submitted an unsuccessful competitive bid between 2010 and 2012 for each of (i) best effort business broadband Internet access services, (ii) special access services, and, to the extent different from (i) or (ii), and (iii) some other form of high-capacity data services to business customers. For each RFP identified, the competitive provider shall provide a description of the RFP, the area covered, the price offered, as well as other competitively relevant information regarding RFPs specified by the Bureau.

42. Parties contend that advertising and marketing relating to special access, regardless of whether a competitive provider has actually built out facilities to a particular location, may impact pricing and deployment decisions. Accordingly, we require competitive providers of special access to submit data, maps, information, marketing materials, and/or documents identifying those geographic areas where they advertised or marketed special access services over existing facilities, via leased facilities, or by building out new facilities as of December 31, 2010 and December 31, 2012, or planned to advertise or market such services within twenty four months following those dates.

43. Another useful category of information may be documents showing the internal analyses undertaken by providers in 2010 or thereafter to evaluate, *inter alia*, competitive market shares, changes in competition, changes in the costs of supplying services, whether to respond to RFPs, and identified rate increases and decreases. We decline at this time to require all providers to submit that information given the burden of identifying and producing such documents. Instead, we shall take a two-stage approach with these internal documents. Specifically, we delegate authority to the Bureau to require a provider to submit such documents if the Bureau finds in an order that (a) a provider's responses to the business-rules questions are incomplete or insufficient for analysis, (b) a competitive provider's responses to the history-of-deployment questions are incomplete or insufficient for analysis, or (c) the data collected for a particular geographic area are incomplete or insufficient for analysis.

44. *Best Efforts Business Broadband Internet Access Services.* As noted above, we define the scope of our data collection to include best efforts business broadband Internet access

services. Because the record indicates that entities that provide best efforts business broadband Internet access services generally deliver those services throughout their footprint over the same network facilities they use to deliver mass market broadband Internet access, we need not collect this data at the same level of granularity as location and facilities data for special access. Data showing whether an entity is providing best efforts business broadband Internet access service at, for example, the census block level would not diminish the rigor of our analysis, but would significantly reduce the burden of producing the necessary data. Indeed, many entities already submit data in connection with the State Broadband Initiative (SBI) Grant Program as to where they offer best efforts broadband Internet access services at the census block level.

45. Further, we already have information on enterprise subscriptions to broadband Internet access services through our Form 477 collection. In their biannual Form 477 filings, facilities-based providers of fixed-location Internet access connections (which include providers equipping UNEs, special access lines, or other leased facilities) submit information, by census tract (areas roughly the size of zip codes), on all Internet access connections (greater than 200 kbps) to end users, including businesses. They also identify the percentage of connections within each census tract that is residential.

46. We therefore require, subject to the exception set forth in paragraph 22 above, entities that submitted data in connection with the SBI Grant Program and offer best efforts business broadband Internet access services to identify, on a granular but not location-by-location basis (ideally, at the census block level), the geographic areas in which they offer those services. The Bureau may accept such entities' certification that the data they have submitted in connection with the SBI Grant Program accurately and completely identify the areas in which they offer best efforts business broadband Internet access services and exclude those areas where they do not offer such services. We further require such entities to submit a price list for the best efforts business broadband Internet access services that they offered within their footprint. Such price list should identify the list prices for the best efforts business broadband Internet access services they offered, whether there was any price variation within their service footprint, and, if so, the nature of such variation. This

information, taken together with the Form 477 data and the data we will collect on UNEs that could be used to provide these services, will allow us to analyze of the availability of, demand for, and pricing of best efforts business broadband Internet access services.

47. *Additional Data Not Collected.* We recognize that the collection we adopt today does not include every type of data that is available. Commenters suggest we ask for a broad array of competition data and information. Others have recommended obtaining information about providers' past lateral construction projects, future upgrade or expansion plans and additional information on competitive bidding. We agree that some such information may be qualitatively useful, and, for example, have required the production of data on competitive provider RFP responses and future plans to inform our analysis. We must, however, balance the administrative burdens with the potential benefits of a broader collection, and believe that this Report and Order will allow us to collect data and information sufficient for our purposes while minimizing, to the extent possible, the burden we impose on industry.

48. Further, we agree with commenters who argue that to understand the impact of competition in special access, it is important to grasp the effects of potential, as well as actual, competition. To this end we are requiring the production of information that will illuminate those factors that affect providers' decisions to expand existing networks, *e.g.*, the non-price factors that may impact where special access providers build new facilities, business rules for deployment, a sample of historical deployment, points of collocation, fiber network maps, availability and use of UNEs, internal analysis of pricing decisions, a selected set of responses to RFPs, and internal competitive analysis.

### C. Statutory Authority

49. Several provisions of the Communications Act and the Telecommunications Act give the Commission authority to adopt this data collection. Under section 218 of the Communications Act, we may "obtain from [common] carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created." As such, section 218 empowers us to collect data from

incumbent LECs, competitive LECs, CMRS providers, and other common carriers whether they provide or purchase special access service or other relevant services.

50. Section 201 requires that interstate special access service rates, terms, and conditions be just and reasonable, section 202 prohibits unjust or unreasonable discrimination in the provision of interstate special access services, and section 706 of the Telecommunications Act requires that we “encourage the deployment of advanced telecommunications capability \* \* \* by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.” The Communications Act in turn provides us authority to carry out these duties—all of which will be aided by today’s data collection—in section 4(i), which empowers the Commission to “perform any and all acts \* \* \* and issue such orders \* \* \* as may be necessary in the execution of [our] functions,” and section 201(b), which authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions” of the Communications Act. These authorities, along with our subject matter jurisdiction over “interstate and foreign commerce in communication by wire and radio,” allow us to extend the data collection beyond common carriers to include other market participants that provide interstate communication by wire or radio. We note that there is widespread accord in the record on the Commission’s authority to require the collection of the data and information it needs to inform our future actions.

51. We note that parties have had extensive notice and opportunity to comment on the need for and scope of this data collection. In the *2005 Special Access NPRM*, the Commission sought comment regarding evidence of marketplace competitiveness and pricing for special access services, including the data and information to perform those analyses. In a subsequent Public Notice, the Commission sought additional data and to otherwise refresh the record of the *Special Access NPRM* in light of subsequent developments, including the release of a GAO report that, among other things, contended that the Commission needed additional data to evaluate the special access marketplace. In the resulting record of

the proceeding, various parties advocated that the Commission undertake a data collection to obtain the data necessary to appropriately perform these analyses. Citing such filings, the Bureau sought comment on an analytical framework necessary to resolve the issues raised in the *Special Access NPRM*, including whether the record contained sufficient information to perform such analyses and, if not, what additional data the Commission should collect, and from whom. Most recently, in the *Special Access Pricing Flexibility Suspension Order*, the Commission stated that a data collection order would be forthcoming. In short, we have provided notice regarding this comprehensive data collection that has given ample opportunity for public participation and met any requirements of the Administrative Procedure Act.

#### *D. Role of the Wireline Competition Bureau*

52. The data collection we adopt today is set forth in Appendix A of the Report and Order. Given the complexities associated with ensuring that the specific questions asked meet the Commission’s needs as expressed in this Report and Order, navigating the Paperwork Reduction Act process, and actually collecting, cleaning, and analyzing the data, we delegate limited authority to the Bureau to: (a) Draft instructions to the data collection and modify the data collection based on public feedback; (b) amend the data collection based on feedback received through the PRA process; (c) make corrections to the data collection to ensure it reflects the Commission’s needs as expressed in this Report and Order; and (d) issue Bureau-level orders and Public Notices specifying the production of specific types of data, specifying a collection mechanism (including necessary forms or formats), and setting deadlines for response to ensure that data collections are complied with in a timely manner, and (e) take other such actions as are necessary to implement this Report and Order. All such actions must be consistent with the terms of the Report and Order.

53. Our goal is to ensure a comprehensive and detailed data collection. Accordingly, we direct the Bureau to engage in outreach with the provider and purchaser communities to ensure that all providers and purchasers are aware of this comprehensive data collection and the penalties for non-response. We encourage the Bureau to reach out to trade associations that represent small providers to inform them of their obligations to participate

in the data collection effort and to ensure that we have maximum participation. In addition, to reduce the burden of this data collection, we direct the Bureau to facilitate whenever possible the conversion of street addresses to geocoded coordinates for small providers and purchasers.

#### *E. Data Retention*

54. Respondents are required to retain any data, documents, documentation, or other information prepared for, or in connection with, their responses to these data reporting requirements for a period of three years or until the Commission issues a notice relieving respondents of this retention requirement upon the exhaustion of any appeals of a final order adopted in this proceeding.

#### *F. Penalties for False Statements and Non-Response*

55. Respondents are required to certify that all statements of fact, data and information submitted to the Commission are true and correct to the best of their knowledge. False statements or misrepresentations to the Commission may be punishable by fine or imprisonment under Title 18 of the U.S. Code. Respondents are reminded that failure to comply with these data reporting requirements may subject them to monetary forfeitures of up to \$150,000 for each violation or each day of a continuing violation, up to a maximum of \$1,500,000 for any single act or failure to act that is a continuing violation.

### **IV. Procedural Matters**

#### *A. Paperwork Reduction Act Analysis*

56. This document contains a new information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA, 44 U.S.C. 3507. Prior to submission to OMB, the Commission will publish a notice in the **Federal Register** seeking public comment on the information collection requirement. In addition, that notice will also seek comment on how the Commission might “further reduce the 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). The information collection contained in this Report and Order will not go into effect until OMB approves the collection and the Commission has published a notice in the **Federal**

**Register** announcing the effective date of the information collection.

#### B. Congressional Review Act

57. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

#### C. Final Regulatory Flexibility Analysis

58. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the *Report and Order* on small entities.

59. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, Initial Regulatory Flexibility analyses (IRFAs) were incorporated in the *Special Access NPRM* for this proceeding. The Commission sought written public comment on the proposals in the *Special Access NPRM*, including comment on the IRFA. Comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### 1. Need for, and Objectives of, the Order

60. In 2005, the Commission initiated this proceeding as a broad examination of what regulatory framework to apply to price cap local exchange carriers’ (LECs) interstate special access services following the expiration of the CALLS plan, including whether to maintain or modify the Commission’s pricing flexibility rules. Moreover, the NPRM sought to examine whether the available marketplace data supported maintaining, modifying, or repealing these rules. In the Report and Order, the Commission continues the process of reviewing our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. Specifically, the Commission initiates a comprehensive data collection and seek comment on a proposal to use the data to evaluate competition in the market for special access services.

61. In the Report and Order, we require providers and purchasers of

special access service and certain other services—including best efforts business broadband Internet access services—as well as entities that provide certain other services, to submit data, information and documents to allow the Commission to conduct a comprehensive evaluation of competition in the special access market. The data, information, and documents required fall into five general categories: market structure; pricing; demand (*i.e.*, observed sales and purchases), terms and conditions; and competition and pricing decisions. We will collect the majority of the data for calendar years 2010 and 2012.

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

62. The Office of Advocacy of the U.S. Small Business Administration (SBA) filed reply comments to the *Notice of Proposed Rulemaking* and the Initial Regulatory Flexibility Act Analysis (IRFA). The SBA asserts that the Commission’s IRFA did not consider the effect of new special access rules on small competitive carriers and urged the Commission to do so. SBA contended that because the Commission’s 2005 Triennial Review Remand Order (TRRO) required both large and small competitive carriers to purchase special access services instead of UNEs in many metropolitan markets, the Commission should consider the impact that changes in special access prices would have on small competitive carriers. SBA suggested a number of potential alternatives to special access pricing regulation that it asserted might minimize the impact on small competitive carriers. No other comments were filed in response to the IRFA.

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

63. 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, if adopted. 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 SBA.

64. *Small Businesses*. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

65. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

66. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to 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 incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Order.

67. *Incumbent Local Exchange Carriers (incumbent LECs)*. 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 incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 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 rules adopted pursuant to the Order.

68. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500



or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

69. *Competitive Local Exchange Carriers (competitive LECs), 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, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have 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 rules adopted pursuant to the Order.

70. *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, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 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 rules adopted pursuant to the Order.

71. *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, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none 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 rules adopted pursuant to the Order.

72. *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, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

73. *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 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

74. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. 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, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

75. *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, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. 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 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

76. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Similarly, according

to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

**77. 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. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 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. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.

Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

**78. Advanced Wireless Services.** In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

**79. Narrowband Personal Communications Services.** In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission 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. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

**80. Paging (Private and Common Carrier).** 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. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two 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. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

**81. 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 Wireless Telecommunications Carriers (except Satellite). 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 that may be affected by rules adopted pursuant to the Order.

82. *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 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.

83. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz

SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

84. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

85. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR 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. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

86. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations

using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS 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. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

87. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions.

Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

88. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses, identified as "entrepreneur" and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction,

484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

89. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

90. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

91. *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" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 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 \$15 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.

92. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.

93. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how

many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

94. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

95. *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"). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *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 proposed herein.

96. *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 Wireless Telecommunications Carriers (except Satellite), *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 and may be affected by rules adopted pursuant to the Order.

97. *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 Wireless Telecommunications

Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersedes data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 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 and may be affected by rules adopted pursuant to the Order.

98. *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 Wireless Telecommunications Carriers (except Satellite), 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 is 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 note, however, that the common carrier microwave fixed licensee category includes some large entities.

99. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersedes data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

100. *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 rules adopted pursuant to the Report and Order.

101. *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 986 LMDS licenses began and closed in 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 \$15 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. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

102. *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.

103. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission

auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

104. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

105. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

106. *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. For this service, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The

Commission notes that the Census’ use of the classifications “firms” does not track the number of “licenses.” The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is 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.

107. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the 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 a future 24 GHz license auction, if held.

108. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under the “Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts. Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.

109. 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 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 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 rules adopted pursuant to the Order.

110. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under \$25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

111. *Cable and Other Program Distribution*. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

112. *Cable Companies and Systems*. The Commission has 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 fewer than 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 and may be affected by rules adopted pursuant to the Order.

113. *Cable System Operators*. The Act 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 less 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.

114. *Open Video Services*. The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted

pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

115. *Internet Service Providers*. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

116. *Internet Publishing and Broadcasting and Web Search Portals*. Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “primarily engaged in (1) publishing and/or broadcasting content on the

Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).” The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

117. *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 \$25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

118. *All Other Information Services.* The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).” Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 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.

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

119. The data, information and document collection required by this Report and Order falls into five general categories: market structure, pricing, demand (*i.e.*, observed sales and purchases), terms and conditions, and competition and pricing decisions.

120. Market structure data consists of, among other things, the situs and type of facilities owned by a provider (or leased subject to an indefeasible right of use) capable of providing special access, by sold and potential capacity and ownership, and the proximity of such facilities to sources of demand. We also require incumbent LEC providers to submit data concerning the number, nature, and situs of UNEs sold. In addition, we also require additional market structure data from competitive providers, such as detailed information related to non-price factors that may impact where special access providers build facilities or expand their network via UNEs and the history of their facility deployments in a sample of locations they serve.

121. Pricing data includes the quantities sold and prices charged for special access services, by circuit element, and information regarding the regulatory environment for incumbent LECs.

122. Demand data includes, among other things, data that identify the bandwidth of the special access services sold or purchased, the locations being served, and other material facts, such as where those purchases occur (*e.g.*, buildings, cell towers) and the nature of the purchaser (*e.g.*, provider or end user).

123. Terms and conditions data and information include, but are not limited to, information regarding contracts or generally available plans for special access services that offer discounts, circuit portability, or other competitively relevant benefits, and whether the terms and conditions associated with those offerings may inhibit a buyer’s ability to switch to other providers, which in turn may inhibit facilities-based entry into special access markets.

124. Competition and pricing data, information and documents include, but are not limited to, those materials related to requests for proposals, advertising and marketing materials, and in very limited circumstances, pricing decision documents.

125. Best efforts business broadband Internet access services include, but are not limited to, data showing where a

provider or entity provides such services, as well as price lists.

126. Questions related to terms and conditions, competition and pricing decisions will span a variety of timeframes specific to the issue addressed. The majority of the market structure, pricing and demand data will be collected for a two-year period. This period of time allows the analysis to control for factors that may vary substantially across geographic areas, but not within a given geographic area.

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

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

128. Entities required to respond to this data request include all providers and purchasers of special access services as well as some entities that provide best efforts business broadband Internet access services. By “providers,” we mean any entity subject to the Commission’s jurisdiction under the Communications Act, as amended, that provides special access services or provides a connection that is capable of providing special access services. By “purchasers,” we mean any entity subject to the Commission’s jurisdiction under the Communications Act, as amended, that purchases special access services. Providers and purchasers may include price cap regulated incumbent LECs, competitive LECs, interexchange carriers, cable operators, and companies that provide fixed wireless communications services. Some entities that fall under the Commission’s jurisdiction and provide best efforts broadband Internet access services, but fall outside our definitions of “provider” and “purchaser,” are also required to respond.

129. Because the focus of this proceeding is on the regulation of special access services in price-cap territories, a rate-of-return carrier, which is not subject to our pricing flexibility rules, shall not be considered a “provider” to the extent it provides



special access within its rate-of-return service area. Likewise, we will not require data from any provider with regard to its operations in any geographic area in which a rate-of-return carrier is the incumbent. Moreover, we will not require a purchaser to produce data based on purchases it makes in those areas in which a rate-of-return carrier is the incumbent. If, however, a provider or purchaser prefers to provide data for all areas without distinguishing between areas served by price cap LECs and rate-of-return LECs, it may do so.

130. Small business concerns were considered when determining the nature of the data to be collected, and identified data, information, and document requirements were modified to reduce burdens on small businesses where possible. The Wireline Competition Bureau previously issued two voluntary data requests in this proceeding. These voluntary requests allowed each potential respondent to make its own determination concerning participation. The responses to the voluntary data requests provided the Commission the means and opportunity to assess which data elements are most important to its ability to assess the special access market, and to eliminate or revise those questions that otherwise yield less valuable information. The voluntary data requests also allowed the Commission to carefully assess the need to obtain data from all providers and purchasers of special access services and certain other services—including small businesses—to conduct a comprehensive analysis of the special access market.

131. In order to conduct a comprehensive analysis of the special access market, the Commission will collect data from all providers and purchasers of special access services as well as some entities that provide best efforts business broadband Internet access services. The Commission notes concerns regarding the burden that this data collection will impose on small companies, and is mindful of the importance of seeking to reduce information collection burdens for small business concerns, and in particular those “with fewer than 25 employees.” Competition in the provision of special access, however, appears to occur at a very granular level—perhaps as low as the building/tower. Accordingly, the Commission finds it necessary to obtain data from special access providers and purchasers of all sizes.

132. We structured the collection somewhat differently for best efforts and special access services to minimize the burden on submitters consistent with

our data requirements and taking into consideration data that the Commission already has available to it. Because the record indicates that entities that provide best efforts business broadband Internet access services generally deliver those services throughout their footprint over the same network facilities they use to deliver mass market broadband Internet access, we need not collect this data at the same level of granularity as location and facilities data for special access. We also do not require entities with fewer than 15,000 customers and fewer than 1,500 business broadband customers to provide data regarding their best efforts business broadband Internet access services. Commenters assert that those entities incur the greatest burden when producing data for the State Broadband Initiative broadband mapping effort.

133. Other modifications made by the Commission include: allowing a provider or purchaser to provide data for all areas without distinguishing between areas served by price cap LECs and rate-of-return LECs; applying sampling methods where possible; limiting the market structure, pricing and demand data collection to a two-year period; and tailoring the timeframes for the terms and conditions, competition and pricing questions to the specific issue addressed. In addition, the Commission chose to limit the production of documents showing the internal analyses undertaken by providers in 2010 or thereafter to evaluate, *inter alia*, competitive market shares, changes in competition, changes in the costs of supplying services, whether to respond to RFPs, and identified rate increases and decreases to circumstances where the Wireline Competition Bureau determines the initial data collection was incomplete or insufficient for analysis.

134. We note that this Report and Order does not change special access pricing regulation. We therefore do not consider the potential alternatives to special access pricing regulation that SBA asserted might minimize the impact on small competitive carriers.

## 6. Report to Congress

The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries

thereof) will also be published in the **Federal Register**.

## D. Ex Parte Presentations

135. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

## V. Mandatory Data Collection

### I. Definitions

The following definitions apply for purposes of this collection only. They are not intended to set or modify precedent outside the context of this collection.

*Affiliated Company* means a company, partnership, corporation, limited liability company, or other business entity that is affiliated with a *Provider*. An entity and a *Provider* are

affiliated if one of them, or an entity that controls one of them, directly or indirectly holds a greater than 25 percent ownership interest in, or controls, the other one.

**Best Efforts Business Broadband Internet Access Service** means a best efforts Internet access data service with a capacity equal to or greater than a DS1 connection that is marketed to enterprise customers (including small, medium, and large businesses). For purposes of this data collection, **Best Efforts Business Broadband Internet Access Services** do not include mobile wireless services, as that term is used in the 15th Annual Mobile Wireless Competition Report.

**Circuit-Based Dedicated Service (CBDS)** means a *Dedicated Service* that is circuit-based. Examples of CBDS include DS1 and DS3 services and Synchronous Optical Networking (SONET)/Optical Carrier N (OCN) services, including point-to-point and ring services.

**Collocation** is an offering by an ILEC whereby a requesting *Competitive Provider's* transmission equipment is located, for a tariffed charge, at the ILEC's central office. It refers to the term as used pursuant to 47 CFR 69.701 *et seq.* of the Commission's rules for purposes of applying for a grant of *Phase I or Phase II Pricing Flexibility* from the Commission. The definition of *Collocation* excludes *Competitive Providers* that collocate in carrier hotels.

**Competitive Provider** means a competitive local exchange carrier (CLEC), interexchange carrier, cable operator, wireless provider or any other entity that is subject to the Commission's jurisdiction under the Communications Act of 1934, as amended, and either provides a *Dedicated Service* or provides a *Connection* over which a *Dedicated Service* could be provided. A *Competitive Provider* does not include an ILEC operating within its incumbent service territory.

**Connection** means a wired "line" or wireless "channel" that provides a dedicated communication path between an *End User's Location* and the first *Node* on a *Provider's* network. Multiple dedicated communication paths serving one or more *End Users* at the same *Location* should be counted as a single *Connection*. A *Connection* may be a *UNE*, including an *Unbundled Copper Loop*. A *Connection* must have the capability of being used to provide one or more *Dedicated Services*; however, a *Connection* can be used to provide other services as well. For example, a dedicated communication path that is currently being used to provide a mass

market broadband service but has the capability to provide a *Dedicated Service* is considered a *Connection* for the purpose of this data collection.

**Contract-Based Tariff** means a *Tariff*, other than a *Tariff Plan*, that is based on a service contract entered into between a customer and an ILEC which has obtained permission to offer contract-based tariff services pursuant to 47 CFR 69.701 *et seq.* of the Commission's pricing flexibility rules or a comparable tariffed intrastate service contract between a customer and an ILEC.

**Dedicated Service** transports data between two or more designated points, *e.g.*, between an *End User's* premises and a point-of-presence, between the central office of a local exchange carrier (LEC) and a point-of-presence, or between two *End User* premises, at a rate of at least 1.5 megabytes per second (Mbps) with prescribed performance requirements that include bandwidth-, latency-, or error-rate guarantees or other parameters that define delivery under a *Tariff* or in a service-level agreement. *Dedicated Service* includes, but is not limited to, CBDS and PBDS. For the purpose of this data collection, *Dedicated Service* does not include "best effort" services, *e.g.*, mass market broadband services such as DSL and cable modem broadband access.

**Disconnection** means the process by which a *Provider*, per a customer request, terminates billing on one or more of a customer's *Dedicated Service* circuits.

DS1 and DS3, except where specified, refer to DS1s and DS3s that are not *UNEs*. DS1s and DS3s are *Dedicated Services*.

**End User** means a business, institutional, or government entity that purchases *Dedicated Service* for its own purposes and does not resell such service. A mobile wireless service provider is considered an *End User* when it purchases *Dedicated Service* to make connections within its own network, *e.g.*, backhaul to a cell site.

**End User Channel Termination** means, as defined in 47 CFR 69.703(a)(2), a dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic.

**Incumbent Local Exchange Carrier (ILEC)** means, for the purpose of this data collection, a LEC that provides a *Dedicated Service* in study areas where it is subject to price cap regulation under sections 61.41–61.49 of the Commission's rules, 47 CFR 64.41–61.49.

**Indefeasible Right of Use (IRU)** means an indefeasible long-term leasehold interest that gives the grantee the right

to exclusively use specified strands of fiber or allocated bandwidth to provide a service as determined by the grantee. An *IRU* confers on the grantee substantially all of the risks and rewards of ownership for the estimated economic life of the asset. *IRUs* typically include the following elements: (i) Payment of a substantial fee up front to enter into the *IRU* contract; (ii) a minimum total duration of 10 years; (iii) conveyance of tax obligations commensurate with the risks and rewards of ownership to the grantee (*e.g.* as opposed to the lesser tax burdens associated with other forms of leases); (iv) terms for payment to the grantor for ancillary services, such as maintenance fees; (v) all additional rights and interests necessary to enable the *IRU* to be used by the grantee in the manner agreed to; and (vi) no unreasonable limit on the right of the grantee to use the asset as it wishes (*e.g.*, the grantee shall be permitted to splice into the *IRU* fiber, though such splice points must be mutually agreed upon by grantor and the grantee of the *IRU*).

**Location** means a building, other man-made structure, a cell site on a building, a free-standing cell site, or a cell site on some other man-made structure where the *End User* is connected. A *Node* is not a *Location*. For the purposes of this data collection, cell sites are to be treated as *Locations* and not as *Nodes*.

**Metropolitan Statistical Area (MSA)** is a geographic area as defined by 47 CFR 22.909(a), 69.703(b).

**Node** is an aggregation point, a branch point, or a point of interconnection on a *Provider's* network, including a point of interconnection to other *Provider* networks. Examples include LEC central offices, remote terminal locations, splice points (including, for example, at manholes), controlled environmental vaults, cable system headends, cable modem termination system (CMTS) locations, and facility hubs.

**Non-MSA** is the portion of an ILEC's study area that falls outside the boundaries of an *MSA*.

**Non-Rate Benefit** means a benefit to the customer other than a discount on the *One Month Term Only Rate*, *e.g.*, a credit towards penalties or non-recurring charges or the ability to move circuits without incurring a penalty.

**One Month Term Only Rate** means, for purposes of this data collection, the non-discounted monthly recurring tariffed rate for DS1, DS3 and/or PBDS services.

**Packet-Based Dedicated Service (PBDS)** means a *Dedicated Service* that is packet-based. Examples of PBDS include Multi-Protocol Label Switched

(MPLS) services; permanent virtual circuits, virtual private lines and similar services provided using ATM, Frame Relay and other packet technologies; (Gigabit) Ethernet Services and Metro Ethernet Virtual Connections; and Virtual Private Networks (VPN).

*Phase I Pricing Flexibility* means regulatory relief for the pricing of *End User Channel Terminations* pursuant to 47 CFR 69.711(b), 69.727(a) of the Commission's rules.

*Phase II Pricing Flexibility* means regulatory relief for the pricing of *End User Channel Terminations* pursuant to 47 CFR 69.711(c), 69.727(b) of the Commission's rules.

*Prior Purchase-Based Commitment* means a type of *Volume Commitment* where the commitment is based on either:

(i) a certain percentage or number of the customer's purchased in-service circuits or lines as measured at the time of making the *Volume Commitment* or measured during a period of time prior to making the *Volume Commitment*, e.g., based on the customer's billing records for the current month or prior month(s); or

(ii) a certain percentage of *Revenues* generated by the customer's purchases as measured at the time of making the *Volume Commitment* or during a period of time prior to making the *Volume Commitment*.

*Providers* collectively refers to both *ILECs* and *Competitive Providers*.

*Purchasers* means *Competitive Providers* and *End Users* that are subject to the Commission's jurisdiction under the Communications Act of 1934, as amended, and purchase *Dedicated Service*.

*Revenues* means intrastate and interstate billed amounts without any allowance for uncollectibles, commissions or settlements. *Revenues* do not include billed amounts that are subsequently discounted by the *Provider*, e.g., customer rebates.

*Tariff* means an intrastate or interstate schedule of rates and regulations filed by common carriers.

*Tariff Plan* means a *Tariff*, other than a *Contract-Based Tariff*, that provides a customer with either a discount from any *One Month Term Only Rate* for the purchase of *DS1* and/or *DS3* services or a *Non-Rate Benefit* that could be applied to these services.

*Term Commitment* means a commitment to purchase a *Dedicated Service* for a period of time, greater than a month, in exchange for a circuit-specific discount and/or a *Non-Rate Benefit*.

*Transport Service* means dedicated transport and includes the services set forth in 47 CFR 69.709(a)(1)–(3).

*Transport Provider* means a *Provider* that supplies *Transport Service*.

*Unbundled Copper Loop* means a copper wire local loop provided by *ILECs* to requesting telecommunications carriers on a non-discriminatory basis pursuant to 47 CFR 51.319(a)(1) that can be used by a *Competitive Provider* to provide a *Dedicated Service*, e.g., Ethernet over Copper. An *Unbundled Copper Loop* is typically a 2- or 4-wire loop that the *ILEC* has conditioned to remove intervening equipment such as bridge taps, load coils, repeaters, low pass filters, range extenders, etc. between the *End User's Location* and the serving wire center to allow for the provision of advanced digital services by a *Competitive Provider*. These loops are commonly referred to as dry copper, bare copper, or xDSL-compatible loops. An *Unbundled Copper Loop* is a type of *UNE*.

*Unbundled Network Element (UNE)* means a local loop provided by an *ILEC* to a requesting telecommunications carrier on a non-discriminatory basis pursuant to 47 CFR 51.319(a).

*Upgrade* means that a customer transitions one or more circuits to a higher capacity circuit.

*Volume Commitment* means a commitment to purchase a specified volume, e.g., a certain number of circuits or *Revenues*, to receive a discount on *Dedicated Services* and/or a *Non-Rate Benefit*.

## II. Mandatory Data Collection Questions

A. *Competitive Providers* must respond to the following questions:

1. Are you an *Affiliated Company*?

- Yes  
 No

a. If so, identify the *Provider(s)* with whom you have an affiliation (name/FRN).

2. Do you (i) own a *Connection*; (ii) lease a *Connection* from another entity under an *IRU* agreement; or (iii) obtain a *Connection* as a *UNE* from an *ILEC* to provide a *Dedicated Service*?

- Yes  
 No

a. If yes, are any of these *Connections* to a *Location* within an area subject to price cap regulation or within an area where the Commission has granted *Phase I* or *Phase II Pricing Flexibility*?

- Yes  
 No

If you answered "no" to question II.A.2 or II.A.2.a, then you are not required to respond to the remaining questions in II.A or the questions in II.D.

## Facilities Information

3. Provide the number of *Locations* to which you provided a *Connection* as of December 31, 2010 and as of December 31, 2012 where your company:

a. Owns the *Connection*;  
b. Leases the *Connection* from another entity under an *IRU* agreement; or  
c. Obtains the *Connection* as a *UNE* from an *ILEC* to provide a *Dedicated Service*:

- i. In total;  
ii. In the form of *DS1s*;  
iii. As a *DS3*; or  
iv. As an *Unbundled Copper Loop*.

4. Provide the information requested below for each *Location* as of December 31, 2010 and as of December 31, 2012 to which your company provided a *Connection* that you: (i) own; (ii) lease from another entity under an *IRU* agreement; or (iii) obtained as a *UNE* from an *ILEC* to provide a *Dedicated Service*.

a. A unique ID for the *Location*;  
b. The actual situs address for the *Location* (i.e., land where the building or cell site is located);  
c. The geocode for the *Location* (i.e., latitude and longitude);  
d. The *Location* type (e.g., building, other man-made structure, cell site in or on a building, free-standing cell site, or a cell site on some other man-made structure like a water tower, billboard, etc.);

e. Whether the *Connection* provided to the location uses facilities leased from another entity under an *IRU* or obtained as a *DS1/DS3 UNE* or *Unbundled Copper Loop*, and in each case, the name of the lessor of the majority of the fiber strands and/or copper loop;

f. Whether any of the *Connections* to the location are provided using fiber;

g. The total sold bandwidth of all *Connections* provided by you to the *Location* in Mbps;

h. The total bandwidth to the *Location* sold directly by you to an *End User*;

i. The total sold fixed wireless bandwidth provided by you to the *Location*; and

j. The total bandwidth sold by you to any cell sites at the *Location*.

5. Provide a map of the routes that constitute your network that are followed by fiber that you (a) own or (b) lease pursuant to an *IRU* agreement, excluding routes followed by fiber that you own or lease pursuant to an *IRU* agreement connecting your network to *End User Locations*. The map must include the locations of all *Nodes* on your network used to interconnect with third party networks, and the year that

each *Node* went live. Also, provide a separate map of the routes followed by fiber that you (a) own or (b) lease pursuant to an *IRU* agreement that connect your network to *End User Locations*.

6. We will provide you with a selected list of the *Locations* you reported in response to question II.A.4. For each identified *Location*, state the month and year that you first provided a *Connection* to that *Location*, whether you originally supplied the *Location* over a *UNE*, and if so, when (if at all) you switched to using a *Connection* that you own or lease as an *IRU*. If the *Location* was first served by your *Connection* on or before January 2008, and the date the *Location* was first served is unknown, then enter 00/0000.

7. For each *ILEC* wire center where your company is collocated, provide the actual situs address, the geocode, and the CLLI code.

8. Explain your business rule(s) used to determine whether to build a *Connection* to a particular *Location*. Provide underlying assumptions.

a. List those geographic areas in which you have built the most *Connections* to *End Users* and explain why, in your view, your business rule has been most successful in those areas.

b. Explain how, if at all, business density is incorporated into your business rule, and if so, how you measure business density.

9. Provide the following information:

a. The current situs address of your U.S. headquarters (*i.e.*, the address of the land where the headquarters is located);

b. The year that this site became your headquarters;

c. Year established and situs address for any prior U.S. headquarters' location for your company, going as far back as 1995, if different from the headquarters' location listed in response to question II.A.9.a;

d. The name of any *Affiliated Company* that owned, or leased under an *IRU* agreement, *Connections* to five or more *Locations* in any *MSA* at the time you became affiliated with the *Affiliated Company*, going as far back as 1995.

e. For each *Affiliated Company* listed in response to question II.A.9.d, provide:

i. The situs address for each *Affiliated Company's* U.S. headquarters at the time of affiliation;

ii. The year that the *Affiliated Company* established the situs address listed in response to question II.A.9.e.i for its U.S. headquarters; and

iii. The year established and situs address for any prior U.S. headquarters'

location designated by the *Affiliated Company*, going as far back as 1995, if different from the headquarters' location listed in response to question II.A.9.e.i.

10. Provide data, maps, information, marketing materials, and/or documents identifying those geographic areas where you, or an *Affiliated Company*, advertised or marketed *Dedicated Service* over existing facilities, via leased facilities, or by building out new facilities as of December 31, 2010 and as of December 31, 2012, or planned to advertise or market such services within twenty-four months of those dates.

11. Identify the five most recent Requests for Proposals (RFPs) for which you were selected as the winning bidder to provide each of the following: (a) *Dedicated Services*; (b) *Best Efforts Business Broadband Internet Access Services*; and, to the extent different from (a) or (b), (c) some other form of high-capacity data services to business customers. In addition, identify the five largest RFPs (by number of connections) for which you submitted an unsuccessful competitive bid between 2010 and 2012 for each of (a) *Dedicated Services*; (b) *Best Efforts Business Broadband Internet Access Services*; and, to the extent different from (a) or (b), (c) some other form of high-capacity data services to business customers. For each RFP identified, provide a description of the RFP, the area covered, the price offered, and other competitively relevant information. Lastly, identify the business rules you rely upon to determine whether to submit a bid in response to an RFP.

#### Billing Information

12. For all *Dedicated Services* provided using transmission paths that you (i) own; (ii) lease from another entity under an *IRU* agreement; or (iii) obtain as a *UNE* from an *ILEC* to provide a *Dedicated Service*, submit the following information by rate element by circuit billed for each month from January 1 to December 31 for the years 2010 and 2012.

a. The closing date of the monthly billing cycle in dd/mm/yyyy format;

b. The six-digit 499-A Filer ID of the customer, where applicable, or other unique ID if customer does not have a 499-A Filer ID;

c. The *Location* ID from question II.A.4.a that can be used to link the circuit rate elements to the terminating *Location* of the circuit (where applicable);

d. The circuit ID common to all elements purchased in common for a particular circuit;

e. The type of circuit (*PBDS*, or *DS1* or *DS3*, etc.) and its bandwidth;

f. A unique billing code for the rate element (*see* question II.A.14);

g. The number of units billed for this rate element (note that the bandwidth of the circuit must not be entered here);

h. The dollar amount of non-recurring charges billed for the first unit of this rate element;

i. The dollar amount of non-recurring charges billed for additional units of this rate element (if different from the amount billed for the initial unit);

j. The monthly recurring dollar charge for the first unit of the rate element billed;

k. The monthly recurring dollar charge for additional units (if different from the amount billed for the initial unit);

l. The total monthly dollar amount billed for the rate element billed in the month;

m. The *Term Commitment* associated with this circuit in months;

n. Indicate whether this rate element is associated with a circuit that contributes to a *Volume Commitment*;

o. Indicate whether the circuit element is owned by you or leased by you as an *IRU* but not as a *UNE*; and

p. The adjustment ID (or multiple adjustment IDs) linking this rate element to the unique out-of-cycle billing adjustments in question II.A.13.a (below) if applicable.

13. For each adjustment, rebate, or true-up for billed *Dedicated Services*, provide the information requested below.

a. A unique ID number for the billing adjustment, rebate, or true-up (*see* question II.A.12.p above);

b. The beginning date of the time period covered by the adjustment or true-up;

c. The ending date of the time period covered by the adjustment or true-up;

d. The scope of the billing adjustment, *i.e.*, whether the adjustment applies to a single rate element on a single circuit, more than one rate element on a single circuit, more than one rate element across multiple circuits, or an overall adjustment that applies to every rate element on every circuit purchased by the customer;

e. The dollar amount of the adjustment or true-up; and

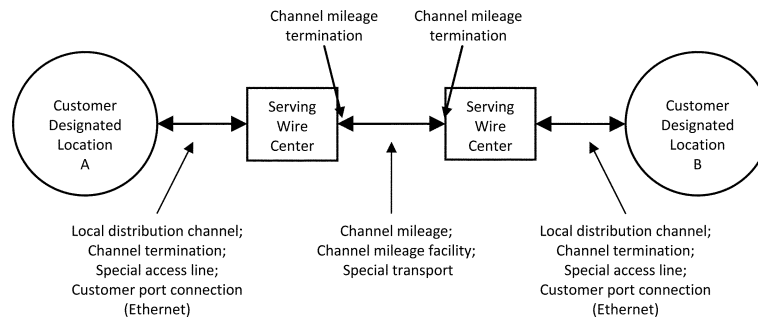
f. A brief description of the billing adjustment, rebate or true-up, *e.g.*, term discount, revenue target rebate, etc.

14. For each unique billing code, please provide the following information below.

a. The billing code for the rate element;

b. Select the phrase that best describes the rate element from the list. Names of some common rate elements are shown

on the generalized circuit diagram below:



i. Channel mileage facility, channel mileage, interoffice channel mileage, special transport (a transmission path between two serving wire centers associated with customer designated locations; a serving wire center and an international or service area boundary point; a serving wire center and a hub, or similar type of connection);

ii. Channel mileage termination, special transport termination (the termination of channel mileage facility or similar transmission path);

iii. Channel termination, local distribution channel, special access line, customer port connection (Ethernet) (a transmission path between a customer designated location and the associated wire center);

iv. Clear channel capability (not shown) (an arrangement which allows a customer to transport, for example, 1.536 Mbps of information on a 1.544 Mbps line rate with no constraint on the quantity or sequence of one and zero bits);

v. Cross-connection (not shown) (semi-permanent switching between facilities, sometimes combined with multiplexing/demultiplexing);

vi. Multiplexing (not shown) (channelizing a facility into individual services requiring a Lower capacity or bandwidth); and

vii. Class of service and/or committed information rate (not shown) (for Ethernet, the performance characteristics of the network and bandwidth available for a customer port connection).

c. If none of the possible entries describes the rate element, enter a short description.

#### Revenues, Terms and Conditions

15. What were your *Revenues* from the sale of *CBDS* in 2010 and 2012? For each year, report *Revenues* in total, separately by *DS1*, *DS3*, and other *CBDS* sales, and separately by customer category, *i.e.*, sales to *Providers* and *End Users*.

16. What were your *Revenues* from the sale of *PBDS* in 2010 and 2012? For each year, report *Revenues* in total, separately by customer category, *i.e.*, sales to *Providers* and *End Users*, and separately by bandwidth for the following categories:

- less than or equal to 1.5 Mbps;
- greater than 1.5, but less than or equal to 50 Mbps;
- greater than 50, but less than or equal to 100 Mbps;
- greater than 100, but less than or equal to 1 Gbps; and
- greater than 1 Gbps.

17. What percentage of your *Revenues* from the sale of *DS1*, *DS3*, and *PBDS* services in 2012 were generated from an agreement or *Tariff* that contains a *Prior Purchase-Based Commitment*?

18. If you offer *Dedicated Services* pursuant to an agreement or *Tariff* that contains either a *Prior Purchase-Based Commitment* or a *Non-Rate Benefit*, then explain how, if at all, those sales are distinguishable from similarly structured *ILEC* sales of *DS1s*, *DS3s*, and/or *PBDS*.

19. Provide the business justification for the *Term or Volume Commitments* associated with any *Tariff* or agreement you offer for the sale of *Dedicated Services*.

B. *ILECs* must respond to the following questions:

1. Are you an *Affiliated Company*?

- Yes  
 No

a. If so, identify the *Provider(s)* with whom you have an affiliation (name/FRN).

#### Facilities Information

2. Provide the number of *Locations* to which you provided a *Connection* in your company study areas as of December 31, 2010 and as of December 31, 2012 where your company:

- owns the *Connection*;
- leases the *Connection* from another entity under an *IRU* agreement; or
- sells the *Connection* as a *UNE*:

i. in total;

ii. in the form of *DS1s*;

iii. as a *DS3*; or

iv. as an *Unbundled Copper Loop*.

3. Provide the information requested below for each *Location* to which your company provided, as of December 31, 2010 and as of December 31, 2012, a *Connection* that you (i) own or (ii) you lease from another entity under an *IRU* agreement:

a. A unique ID for the *Location*;

b. The actual situs address for the *Location* (*i.e.*, land where the building or cell site is located);

c. The geocode for the *Location* (*i.e.*, latitude and longitude);

d. The *Location* type (*e.g.*, building, other man-made structure, cell site in or on a building, free-standing cell site, or a cell site on some other man-made structure like a water tower, billboard, etc.);

e. Whether any of the *Connections* to the *Location* are provided using fiber;

f. The total sold bandwidth of all *Connections* provided by you to the *Location* in Mbps (exclude connections sold without a specified bandwidth, *e.g.*, *Unbundled Copper Loops*);

g. The total number of *Unbundled Copper Loops* sold by you to the *Location*;

h. The total bandwidth to the *Location* sold by you as *UNEs* in the form of *DS1s* and/or *DS3s*;

i. The total bandwidth to the *Location* sold directly by you to an *End User*;

j. The total sold fixed wireless bandwidth provided by you to the *Location*; and

k. The total bandwidth sold by you to any cell sites at the *Location*.

#### Billing Information

4. For all *Dedicated Services* provided using transmission paths that you (i) own or (ii) lease from another entity under an *IRU* agreement and for *Unbundled Copper Loops* that you own and provision, submit the following information by rate element by circuit

billed for each month from January 1 to December 31 for the years 2010 and 2012.

- a. The closing date of the monthly billing cycle in dd/mm/yyyy format;
- b. The six-digit 499A Filer ID of the customer, where applicable, or other unique ID if customer does not have a 499A Filer ID;
- c. The *Location* ID from question II.B.3.a that can be used to link the circuit rate elements to the terminating *Location* of the circuit (where applicable);
- d. The circuit ID common to all elements purchased in common for a particular circuit;
- e. The type of circuit, (*DS1* sold as a *UNE*, *DS3* sold as a *UNE*, *Unbundled Copper Loop*, *PBDS*, non-*UNE DS1s* or *DS3s*, etc.) and the bandwidth of the circuit;
- f. The serving wire center/mileage rating point Common Language Location Identification (CLLI) of one end of the circuit (MRP1);
- g. The serving wire center/mileage rating point CLLI of the other end of the circuit (MRP2);
- h. The latitude of MRP1 to 5 decimal places;
- i. The longitude of MRP1 to 5 decimal places;
- j. The latitude of MRP2 to 5 decimal places;
- k. The longitude of MRP2 to 5 decimal places;
- l. End of the circuit (1-MRP1 or 2-MRP2) associated with this rate element;
- m. The billing code for the rate element (see question II.B.6);
- n. The density pricing zone for the rate element;

o. The number of units billed for this rate element (note that the bandwidth of the circuit must not be entered here);

p. The dollar amount of non-recurring charges billed for the first unit of this rate element;

q. The dollar amount of non-recurring charges billed for additional units of this rate element (if different from the amount billed for the initial unit);

r. The monthly recurring dollar charge for the first unit of the rate element billed;

s. The monthly recurring dollar charge for additional units (if different from the amount billed for the initial unit);

t. The total monthly dollar amount billed for the rate element;

u. The *Term Commitment* associated with this circuit in months;

v. Indicate whether this rate element is associated with a circuit that contributes to a *Volume Commitment*;

w. Indicate whether this rate element is associated with a circuit that contributes to a revenue commitment in a *Tariff Plan*;

x. Indicate whether this rate element was purchased pursuant to a *Contract-Based Tariff*;

y. Indicate whether the circuit element is owned by you or leased by you as an *IRU*;

z. The adjustment ID (or multiple adjustment IDs) linking this rate element to the unique out-of-cycle billing adjustments in question II.B.5.a (below) if applicable; and

aa. If the rate element is sold under a *Tariff*, list the *Tariff* name.

5. For each adjustment, rebate, or true-up for billed *Dedicated Services*, provide the information requested below.

a. A unique ID for the billing adjustment or true-up (see question II.B.4.z above);

b. A unique ID number for the contract or *Tariff* from which the adjustment originates;

c. The beginning date of the time period covered by the adjustment or true-up;

d. The ending date of the time period covered by the adjustment or true-up;

e. The scope of the billing adjustment, *i.e.*, whether the adjustment applies to a single rate element on a single circuit, more than one rate element on a single circuit, more than one rate element across multiple circuits, or an overall adjustment that applies to every rate element on every circuit purchased by the customer;

f. The dollar amount of the adjustment or true-up;

g. Whether the adjustment is associated with a *Term Commitment*, and if so, the length of the term specified in the contract necessary to achieve the rebate;

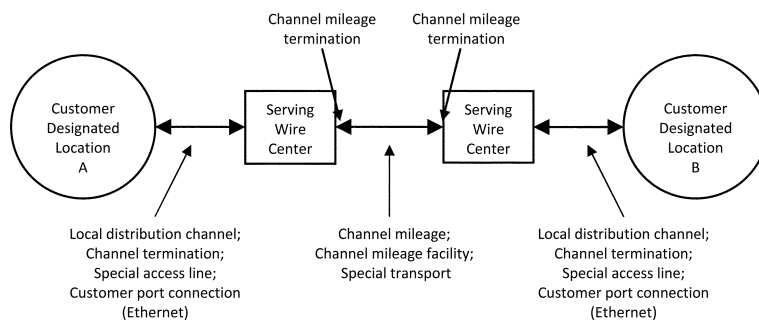
h. Whether the adjustment is associated with a *Volume Commitment*, and if so, the number of circuits and/or dollar amount specified in the contract necessary to achieve the rebate; and

i. If the adjustment is for some other reason, a brief description of the reason for the adjustment.

6. For each unique billing code, please provide the following information below.

a. The billing code for the rate element;

b. The phrase that best describes the rate element from the list. Names of some common rate elements are shown on the generalized circuit diagram below:



i. Channel mileage facility, channel mileage, interoffice channel mileage, special transport (a transmission path between two serving wire centers associated with customer designated locations; a serving wire center and an international or service area boundary

point; a serving wire center and a hub, or similar type of connection);

ii. Channel mileage termination, special transport termination (the termination of channel mileage facility or similar transmission path);

iii. Channel termination, local distribution channel, special access line,

customer port connection (Ethernet) (a transmission path between a customer designated location and the associated wire center);

iv. Clear channel capability (not shown) (an arrangement which allows a customer to transport, for example, 1.536 Mbps of information on a 1.544

Mbps line rate with no constraint on the quantity or sequence of one and zero bits);

v. Cross-connection (not shown) (semi-permanent switching between facilities, sometimes combined with multiplexing/demultiplexing);

vi. Multiplexing (not shown) (channelizing a facility into individual services requiring a Lower capacity or bandwidth); and

vii. Class of service and/or committed information rate (not shown) (for Ethernet, the performance characteristics of the network and bandwidth available for a customer port connection).

c. If none of the possible entries describes the rate element, enter a short description.

7. List the CLLI code for each one of your wire centers that was subject to price cap regulation as of December 31, 2010 and as of December 31, 2012, *i.e.*, those wire centers in your incumbent territory where the Commission had not granted you pricing flexibility. For those MSAs and Non-MSAs where the Commission granted you *Phase I* or *Phase II Pricing Flexibility* as of December 31, 2010 and as of December 31, 2012, list the CLLI codes for the wire centers associated with each MSA and Non-MSA for each year, the name of the relevant MSA and Non-MSA for each year, and the level of pricing flexibility granted for the MSA and Non-MSA, *i.e.*, *Phase I* and/or *Phase II Pricing Flexibility*.

#### Revenues, Terms and Conditions Information

8. What were your *Revenues* from the sale of *CBDS* services in 2010 and 2012? For each year, report *Revenues* in total, separately by *DS1*, *DS3*, and other *CBDS* sales, and separately by customer category, *i.e.*, sales to *Competitive Providers* and *End Users*.

9. What were your *Revenues* from the sale of *PBDS* services in 2010 and 2012? For each year, report *Revenues* in total, separately by customer category, *i.e.*, sales to *Competitive Providers* and *End Users*, and separately by bandwidth for the following categories:

- Less than or equal to 1.5 Mbps;
- Greater than 1.5, but less than or equal to 50 Mbps;
- Greater than 50, but less than or equal to 100 Mbps;
- Greater than 100, but less than or equal to 1 gigabyte per second (Gbps); and
- Greater than 1 Gbps.

10. What were your *Revenues* from the *One Month Term Only Rate* charged for *DS1*, *DS3*, and/or *PBDS* services in 2010 and 2012? For each year, report

*Revenues* in total, separately by *DS1*, *DS3*, and *PBDS* sales as applicable, and separately by customer category, *i.e.*, sales to *Competitive Providers* and *End Users*.

11. How many customers were purchasing *DS1*, *DS3*, and/or *PBDS* services pursuant to your *One Month Term Only Rates* as of December 31, 2012? Report customer numbers in total, separately for *DS1*, *DS3*, and *PBDS* services as applicable, and separately by customer category, *i.e.*, the number of *DS1*, *DS3*, and *PBDS* service customers that were *Competitive Providers* and *End Users*.

12. Separately list all available *Tariff Plans* and *Contract-Based Tariffs* that can be applied to the purchase of *DS1*, *DS3* and/or *PBDS* services and provide the information requested below for each plan.

- This plan is a:
  - Tariff Plan*
  - Contract-Based Tariff* (select one)
- Plan name:
- c. *Tariff* and Section Number(s):
- d. This plan contains:
  - Term Commitment(s)*
  - Volume Commitment(s)*
  - Non-Rate Benefit* option(s) (select all that apply)

e. If the plan contains options for *Non-Rate Benefits*, explain of the available *Non-Rate Benefits*.

f. This plan can be applied to the purchase of:

- DS1* services
- DS3* services
- PBDS*
- Other (select all that apply)

g. In what geographic areas is this plan available, *e.g.*, nationwide, a particular region of the country, certain states, certain MSAs, a particular study area?

h. To receive a discount or *Non-Rate Benefit* under this plan, must the customer make a *Prior Purchase-Based Commitment*?

- Yes
- No

i. Do purchases of *DS1* or *DS3* services in areas outside of your price cap study area(s) (*e.g.*, purchases from an *Affiliated Company* that is a CLEC) count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

- Yes
- No
- N/A (no *Volume Commitment*)

j. Do *DS1* or *DS3* purchases in areas where you are subject to price cap regulation and where pricing flexibility has not been granted count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

Yes

No

N/A (no *Volume Commitment*)

k. Do non-tariffed *PBDS* purchases by the customer count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

Yes

No

N/A (no *Volume Commitment*)

l. Do purchases by the customer for services other than *DS1s*, *DS3s*, and *PBDS* count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

Yes

No

N/A (no *Volume Commitment*)

m. Is the discount or *Non-Rate Benefit* available under this plan conditioned on the customer limiting its purchase of *UNEs*, *e.g.*, customer must keep its purchase of *UNEs* below a certain percentage of the customer's total spend?

Yes

No

n. What were your *Revenues* from the provision of *DS1*, *DS3*, and/or *PBDS* services under this plan in 2010 and in 2012? For each year, report *Revenues* in total, separately by *DS1*, *DS3*, and *PBDS* sales as applicable, and separately by customer category, *i.e.*, sales to *Competitive Providers* and *End Users*.

o. What percentage of the *Revenues* reported above in response to question II.B.12.n for 2010 and 2012 were generated and also reported as *Revenues* under a separately identified *Tariff Plan* or *Contract-Based Tariff*?

p. What percentage of the *Revenues* generated by this plan in 2012 resulted from a *Term Commitment* of five or more years?

q. What is the business justification for any *Term* or *Volume Commitments* associated with this plan?

r. How many customers were subscribed to this plan as of December 31, 2012? Report customer numbers in total, separately for *DS1*, *DS3*, and *PBDS* services as applicable, and separately by customer category, *i.e.*, the number of *DS1*, *DS3*, and/or *PBDS* customers that were *Competitive Providers* and *End Users*.

s. Of those customers subscribed as of December 31, 2012, how many in 2012 failed to meet any *Volume Commitment* or *Term Commitment* required to retain a discount or *Non-Rate Benefit* they originally agreed to when entering into this plan?

13. Do you have any non-tariffed agreement with an *End User* or *Competitive Provider* that, directly or

indirectly, provides a discount or a *Non-Rate Benefit* on the purchase of tariffed *DS1s*, *DS3s*, and/or *PBDS*, restricts the ability of the *End User* or *Competitive Provider* to obtain *UNEs*, or negatively affects the ability of the *End User* or *Competitive Provider* to purchase *Dedicated Services*?

- Yes  
 No

a. If so, identify each agreement below, including the parties to the agreements, the effective date, and a summary of the relevant provisions.

C. Entities that provide *Best Efforts Business Broadband Internet Access Services* must respond to the following questions:

1. Do you have fewer than 15,000 customers and fewer than 1,500 business broadband customers?

- Yes  
 No

2. If you answered “no” to question II.C.1, then answer the following questions:

a. Did you submit data in connection with the State Broadband Initiative (SBI) Grant Program for 2010?

- Yes  
 No

b. Did you submit data in connection with the SBI Grant Program for 2012?

- Yes  
 No

If you answered “no” to questions II.C.1.a and II.C.1.b, then you do not need to answer any further questions in this section.

c. Did the data you submitted in connection with the SBI Grant Program in 2010 accurately and completely identify the areas in which you offered *Best Efforts Business Broadband Internet Access Services* and exclude those areas where you did not offer such services as of December 31, 2010?

- Yes  
 No

i. If yes, then provide the list of prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block submitted in connection with the SBI Grant Program as of December 31, 2010. If there is a price variation within your service footprint, indicate which prices are associated with which census blocks.

ii. If no, then provide a list of all the census blocks in which you were providing *Best Efforts Business Broadband Internet Access Services* as of December 31, 2010, and a list of the prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block as of December 31, 2010. If there is a price variation within your service

footprint, indicate which prices are associated with which census blocks.

d. Did the data you submitted in connection with the SBI Grant Program in 2012 accurately and completely identify the areas in which you offered *Best Efforts Business Broadband Internet Access Services* and exclude those areas where you did not offer such services as of December 31, 2012?

- Yes  
 No

i. If yes, then provide the list of prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block submitted in connection with the SBI Grant Program as of December 31, 2012. If there is a price variation within your service footprint, indicate which prices are associated with which census blocks.

ii. If no, then provide a list of all the census blocks in which you were providing *Best Efforts Business Broadband Internet Access Services* as of December 31, 2012, and a list of the prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block as of December 31, 2012. If there is a price variation within your service footprint, indicate which prices are associated with which census blocks.

D. All *Providers* must respond to the following questions:

1. Describe your company’s short term and long-range promotional and advertising strategies and objectives for winning new—or retaining current—customers for *Dedicated Services*. In your description, please describe the size (e.g., companies with 500 employees or less, etc.), geographic scope (e.g., national, southeast, Chicago, etc.), and type of customers your company targets or plans to target through these strategies.

2. Identify where your company’s policies are recorded on the following *Dedicated Service*-related processes: (a) Initiation of service; (b) service *Upgrades*; and (c) service *Disconnections*. For instance, identify where your company records recurring and non-recurring charges associated with the processes listed above. If recorded in a *Tariff*, provide the specific *Tariff* section(s). If these policies are recorded in documents other than *Tariffs*, list those documents and state whether they are publicly available. If they are publicly available, explain how to find them. For documents that are not publicly available, state whether they are conveyed to customers orally or in writing.

3. Explain the procedures your company follows when a customer

continues to purchase *End-user Channel Terminations* from your company but requests to change *Transport Providers* from your company to another *Provider*. In addition, answer the following questions regarding your process:

a. Where are your procedures that govern these changes recorded? Provide the relevant *Tariff* number and section(s), if applicable, or identify which documents other than *Tariffs* contain these procedures. For documents that are not publicly available, state whether they are conveyed to customers orally or in writing.

b. In 2012, what was the average length of time that it took your company to complete the process of connecting *End User Channel Terminations* to a new *Transport Provider*?

c. Can purchasers negotiate timelines on a case-by-case basis?

d. Do any of your company’s policies, whether contained in *Tariffs* or other documents, limit the maximum number of circuits that can be connected to a new *Transport Provider* per day, per week, or per month? If yes, what is that number and what is the business rationale for this requirement?

e. How does connecting to a new *Transport Provider* impact the rate a customer pays for the *End User Channel Terminations* the customer continues to purchase from your company?

f. While the change in *Transport Providers* is pending completion and before there is a *Disconnection* in the *Transport Service* provided by your company, are there instances where the customer must pay a higher rate for the *Transport Service* provided by your company? If so, then detail those circumstances and what rates would apply before and after the request is made. For example, if the customer’s contract expires or is terminated while a request to connect to a new *Transport Provider* is pending, would the customer pay a *One Month Term Only Rate* until there is a *Disconnection* in the *Transport Service* provided by your company?

E. *Purchasers* that are mobile wireless service providers must respond to the following questions:

1. How many cell sites do you have on your network?

2. Provide the information requested below for each cell site on your network as of December 31, 2010 and as of December 31, 2012.

a. A unique ID for the cell site;

b. The actual situs address of the cell site (i.e., land where the cell site is located) if the cell site is located in or on a building;



- c. The geocode for the cell site (*i.e.*, latitude and longitude);
- d. The CLLI code of the incumbent LEC wire center that serves the cell site, where applicable;
- e. Whether the cell site is in or on a building, is a free-standing cell site, or is on some other type of man-made structure, *e.g.*, a water tower, billboard, etc.;
- f. If the cell site is served by a *CBDS*, indicate the equivalent number of *DS1s* used;
- g. If the cell site is served by a *PBDS*, indicate the bandwidth of the circuit in Mbps;
- h. If the cell site is served by a wireless *Connection*, indicate the bandwidth of the circuit in Mbps;
- i. The name of the *Provider(s)* that supplies your *Connection* to the cell site; and
- j. If you self-provide a *Connection* to the cell site, the provisioned bandwidth of that self-provided *Connection*.

F. All *Purchasers* must respond to the following questions:

#### Expenditures Information

1. What is the principal nature of your business, *e.g.*, are you a CLEC, cable system operator, fixed wireless service provider, wireless Internet service provider, terrestrial or satellite mobile wireless service provider, interconnected VoIP service provider, etc.?
2. What were your expenditures, *i.e.*, dollar volume of purchases, on *Dedicated Services* for 2010 and 2012? For each year, report expenditures in total, separately for *CBDS* and *PBDS* purchases, and separately for purchases from *ILECs* and *Competitive Providers*.
3. Provide your company's expenditures, *i.e.*, dollar volume of purchases, for *DS1s*, *DS3s*, and/or *PBDS* purchased from *ILECs* pursuant to a *Tariff* in 2010 and in 2012. For each of the following categories, report expenditures for each year in total and separately for *DS1s*, *DS3s* and *PBDS*:
  - a. All *DS1s*, *DS3s*, and *PBDS*;
  - b. *DS1s*, *DS3s*, and *PBDS* purchased at *One Month Term Only Rates*;
  - c. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariff Plans*;
  - d. *DS1s*, *DS3s*, and *PBDS* purchased under *Contract-Based Tariffs*;
  - e. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariff Plans* that contained a *Term Commitment* but not a *Volume Commitment*;
  - f. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariff Plans* that contained a *Prior Purchase-Based Commitment*;
  - i. Of the total (and for the separate *DS1*, *DS3*, and *PBDS* totals where applicable), indicate the average

discount from the *One Month Term Only Rate* incorporated in the expenditures.

For purposes of calculating the percentages described above, an example would be a *Tariff Plan* that requires a purchase of 20 *DS1s* and 10 *DS3* and generates expenditures of \$2,000 for calendar-year 2012. If those same circuits were purchased at *One Month Term Only Rates* of \$100 per *DS1* and \$200 per *DS3*, then total expenditures would instead be \$4,000. Since the *Tariff Plan* under this scenario generated 50% of the expenditures that would be generated from *One Month Term Only Rates*, the discount would be 50%.

g. *DS1s*, *DS3s*, and *PBDS* purchased under *Contract-Based Tariffs* that contained a *Term Commitment* but not a *Volume Commitment*; and

h. *DS1s*, *DS3s*, and *PBDS* purchased under *Contract-Based Tariffs* that contained a *Prior Purchase-Based Commitment*;

i. Of the total (and for the separate *DS1* and *DS3* totals if available), indicate the average discount from the *One Month Term Only Rate* incorporated in the expenditures.

An example of how to calculate this percentage can be found at question II.F.3.f.i.

4. What were your expenditures, *i.e.*, dollar volume of purchases, on *DS1s*, *DS3*, and/or *PBDS* purchased from *Competitive Providers* pursuant to a *Tariff* in 2010 and in 2012? Report expenditures in total and separately for *DS1s*, *DS3s* and *PBDS*, as applicable, for the following categories for each year:

a. All *DS1s*, *DS3s*, and *PBDS*;

b. *DS1s*, *DS3s*, and *PBDS* purchased at *One Month Term Only Rates*;

c. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariffs* that contained a *Term Commitment* but not a *Volume Commitment*;

d. *DS1s*, *DS3s*, and *PBDS* purchased under *Tariffs* that contained a *Prior Purchase-Based Commitment*;

i. Of the total (and for the separate *DS1*, *DS3*, and *PBDS* totals where applicable), indicate the average discount from the *One Month Term Only Rate* incorporated in the expenditures.

An example of how to calculate this percentage can be found at question II.F.3.f.i.

5. What were your expenditures, *i.e.*, dollar volume of purchases, on *DS1s*, *DS3s*, and/or *PBDS* purchased from *ILECs* and *Competitive Providers* pursuant to an agreement (not a *Tariff*) in 2010 and in 2012? Report expenditures in total, separately for purchases from *ILECs* and *Competitive*

*Providers*, and separately for *DS1s*, *DS3s* and *PBDS*, as applicable, for the following categories for each year:

a. All *DS1s*, *DS3s*, and *PBDS*;

b. *DS1s*, *DS3s*, and *PBDS* purchased at a non-discounted rate;

c. *DS1s*, *DS3s*, and *PBDS* purchased under a non-tariffed agreement that contained a *Term Commitment* but not a *Volume Commitment*;

d. *DS1s*, *DS3s*, and *PBDS* purchased under a non-tariffed agreement that contained a *Prior Purchase-Based Commitment*;

i. Of the total (and for the separate *DS1*, *DS3*, and *PBDS* totals where applicable), indicate the average discount from the non-discounted rate incorporated in the expenditures.

An example of how to calculate this percentage can be found at question II.F.3.f.i.

6. What were your expenditures, *i.e.*, dollar volume of purchases, on *PBDS* purchased under a *Tariff* in 2010 and in 2012?

a. Separately for purchases from *ILECs* and *Competitive Providers* for the following service bandwidth categories:

- i. less than or equal to 1.5 Mbps;
- ii. greater than 1.5, but less than or equal to 50 Mbps;
- iii. greater than 50, but less than or equal to 100 Mbps;
- iv. greater than 100, but less than or equal to 1 Gbps; or
- v. greater than 1 Gbps.

7. What were your expenditures, *i.e.*, dollar volume of purchases, on non-tariffed *PBDS* in 2010 and in 2012?

a. Separately for purchases from *ILECs* and *Competitive Providers* for the following service bandwidth categories:

- i. less than or equal to 1.5 Mbps;
- ii. greater than 1.5, but less than or equal to 50 Mbps;
- iii. greater than 50, but less than or equal to 100 Mbps;
- iv. greater than 100, but less than or equal to 1 Gbps; or
- v. greater than 1 Gbps.

#### Terms and Conditions Information

8. Explain whether the terms and conditions of any contract to which you are a party for the purchase of *Dedicated Services* or the policies of any of your *Providers* constrain your ability to:

- a. Decrease your purchases from your current *Provider(s)*;
- b. Purchase services from another *Provider* currently operating in the geographic areas in which you purchase services;
- c. Purchase non-tariffed services, such as Ethernet services, from your current

*Provider* of tariffed *DS1*, *DS3*, and/or *PBDS* services or from other *Providers* operating in the geographic areas in which you purchase tariffed services;

d. Contract with companies that are considering entering the geographic areas in which you purchase tariffed services;

e. Move circuits, for example, moving your *DS1* and/or *DS3 End-User Channel Terminations* to connect to another *Transport Provider*; or

f. Obtain *Dedicated Services*.

Relevant terms and conditions, among others, may include: (a) Early termination penalties; (b) shortfall provisions; (c) overlapping/supplemental discounts plans with different termination dates; (d) requirements to include all services, including new facilities, under a *Tariff Plan* or *Contract-Based Tariff*; or (e) requiring purchases in multiple geographic areas to obtain maximum discounts.

In your answer, highlight contracts with particularly onerous constraints by comparison with more typical contract provisions. Also, at a minimum, list: (a) The *Provider* and indicate whether the *Provider* is an *ILEC* or a *Competitive Provider*; (b) a description of the term or condition; (c) the geographic area in which the tariffed services are provided; (d) the name of the vendor providing the tariffed service; and (e) the specific *Tariff* number(s) and section(s), or if the policy at issue is recorded in documents other than *Tariffs*, list those documents and how you obtained them.

If you allege that a term, condition, or *Provider's* policy negatively affects your ability to obtain *Dedicated Services*, state whether you have brought a complaint to the Commission, a state commission or court about this issue and the outcome. If you have not brought a complaint, explain why not.

9. Explain your experience with changing *Transport Providers* between January 1, 2010 and December 31, 2012, describing whether and how it has impacted your ability to purchase *Dedicated Services*. Where appropriate, identify the *Provider(s)* in your responses below.

a. How many times did you change *Transport Providers* while keeping your *End User Channel Terminations* with an *ILEC* or *Competitive Provider*? An estimate of the number of circuits moved to a new *Transport Provider*, or the number of such changes requested for each year, is sufficient.

b. What was the length of time, on average, it took for the *ILEC* or *Competitive Provider* to complete the process of connecting your last-mile *End-user Channel Terminations* to

another *Transport Provider*? An estimate is sufficient.

c. Were you given the opportunity to negotiate time lines on a case-by-case basis?

d. How did connecting to a new *Transport Provider* impact the rate you paid for the *End User Channel Terminations* you continued to purchase from the *ILEC* or *Competitive Provider*?

e. Did connecting to a new *Transport Provider* typically impact the rate you continued to pay for *Transport Service* from the incumbent *Provider* while the change in *Transport Providers* remained pending? If so, what was the average percentage change in rates? Did you ever pay a *One Month Term Only Rate* during that time?

10. Describe any circumstances since January 1, 2010, in which you have purchased circuits pursuant to a *Tariff*, solely for the purpose of meeting a *Volume Commitment* required for a discount or *Non-Rate Benefit* from your *Provider* (i.e., you did not utilize the circuits). In your description, provide at least one example, which at a minimum, lists:

a. The geographic area (e.g., *MSA* or *Non-MSA*) in which you purchased the unnecessary circuits;

b. The name of the *Provider* providing the circuits at issue;

c. A description of the *Volume Commitment*;

d. The *Tariff* and section number(s), if applicable, of the specific terms and conditions described;

e. A comparison of the dollar amount of the unnecessary circuit(s) purchased versus the dollar amount of penalties your company would have had to pay had it not purchased and/or maintained the circuit(s), and a description of how that comparison was calculated.

11. For each year for the past five years, state the number of times and in what geographic area(s) you have switched from one *Provider* of *Dedicated Services* to another.

12. Explain the circumstances since January 1, 2010 under which you have paid *One Month Term Only Rates* for *DS1*, *DS3*, and/or *PBDS* services and the impact, if any, it had on your business and your customers. In your response, indicate any general rules you follow, if any, concerning the maximum number of circuits and maximum amount of time you will pay at *One Month Term Only Rates*, and your business rationale for any such rules.

13. Separately list all available *Tariffs* under which your company purchases *DS1s*, *DS3s*, and/or *PBDS* and provide the information requested below for each plan.

a. This plan is a:

*Tariff Plan*

*Contract-Based Tariff* (select one)

b. Plan name:

c. *Provider* name:

d. *Tariff* and Section Number(s):

e. *Tariff* type:

Interstate

Intrastate

f. This plan contains:

*Term Commitment(s)*

*Volume Commitment(s)*

*Non-Rate Benefit* option(s) (select all that apply)

g. If the plan contains *Non-Rate Benefits*, identify the *Non-Rate Benefits* that were relevant to your decision to purchase services under this plan.

h. This plan can be applied to the purchase of:

*DS1* services

*DS3* services

*PBDS*

Other (select all that apply)

i. In what geographic areas do you purchase *DS1s*, *DS3s*, and/or *PBDS* under this plan, e.g., nationwide, a particular region of the country, certain states, certain *MSAs*, a particular study area?

j. To receive a discount or *Non-Rate Benefit* under this plan, does your company make a *Prior Purchase-Based Commitment*?

Yes

No

k. If this is an *ILEC* plan, do *DS1* or *DS3* purchases your company makes outside the study area(s) of the *ILEC* (e.g., purchases from an *Affiliated Company* of the *ILEC* that is providing out-of-region service as a *CLEC*) count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

Yes

No

N/A (no *Volume Commitment*, not an *ILEC* plan)

i. If you answered yes, in what geographic areas outside the study area(s) of the *ILEC*, do you purchase these *DS1s* and/or *DS3s*?

ii. Of the geographic areas identified, in which of those areas would your company have purchased from a different *Provider*, if at all, had it not been for the discounts or *Non-Rate Benefits* received under this plan? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

l. If this is an *ILEC* plan, do *DS1* and/or *DS3* purchases your company makes from the *ILEC* in price cap areas where the Commission has not granted the *ILEC* pricing flexibility count towards meeting any *Volume Commitment* to

receive a discount or *Non-Rate Benefit* under this plan?

- Yes  
 No  
 N/A (no *Volume Commitment*, not an *ILEC* plan)

i. If you answered yes, then identify the price cap areas where you purchase *DS1s* and/or *DS3s* that count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

m. If this is an *ILEC* plan, do *DS1* and/or *DS3* purchases your company makes from the *ILEC* in areas where the Commission has granted either *Phase I* or *Phase II Pricing Flexibility* count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

- Yes  
 No  
 N/A (no *Volume Commitment*, not an *ILEC* plan)

i. If you answered yes, in what geographic areas subject to pricing flexibility do you purchase *DS1s* and/or *DS3s* that count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

ii. Of the geographic areas identified, in which of those areas would your company have purchased from a different *Provider*, if at all, had it not been for the requirements of the *Tariff Plan*? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

n. If this is an *ILEC* plan, do non-tariffed *PBDS* purchases you make from this *ILEC* count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

- Yes  
 No  
 N/A (no *Volume Commitment*, not an *ILEC* plan)

i. If you answered yes, in what geographic areas do you purchase non-tariffed *PBDS* that counts towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan.

ii. Of the geographic areas identified, in which of those areas would your company have purchased *PBDS* from a different *Provider*, if at all, had it not been for the requirements of the plan? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

o. If this is an *ILEC* plan, do purchases you make for services other than *DS1s*, *DS3s*, and *PBDS* from this *ILEC* count towards meeting any *Volume*

*Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

- Yes  
 No  
 N/A (no *Volume Commitment*, not an *ILEC* plan)

i. If you answered yes, identify the other services purchased and the geographic areas where you purchase these services that count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan.

ii. Of the geographic areas identified, in which of those areas would your company have purchased those other services from a different *Provider*, had it not been for the requirements of the plan? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

p. Is the discount or *Non-Rate Benefit* available under this plan conditioned on the customer limiting its purchase of *UNEs*, e.g., the customer must keep its purchase of *UNEs* below a certain percentage of the customer's total spend? If yes, then provide additional details about the condition.

14. Do you have any non-tariffed agreement with an *ILEC* that, directly or indirectly, provides a discount or a *Non-Rate Benefit* on the purchase of tariffed *DS1*, *DS3*, and/or *PBDS* services, restricts your ability to obtain *UNEs*, or negatively affects your ability to purchase *Dedicated Services*?

- Yes  
 No

a. If so, identify each agreement below, including the parties to the agreement, the effective date, and a summary of the relevant provisions.

G. *Non-Providers* and *Non-Purchasers* instructed to respond to this data collection must respond to the following:

1. If you must respond to this data collection because you filed the FCC Form 477 in 2012 to report the provision of "broadband connections to end user locations" but are not (a) a *Provider* or a *Purchaser* as defined in this data collection or (b) an entity that provides *Best Efforts Business Broadband Internet Access Services*, then indicate as such below and complete the certification accompanying this data collection.

- I am not a *Provider*.  
 I am not a *Purchaser*.  
 I do not provide *Best Efforts*

*Business Broadband Internet Access Services*.

(select all that apply)

Certification

I have examined the response and certify that, to the best of my

knowledge, all statements of fact, data, and information contained therein are true and correct.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Respondents are reminded that failure to comply with these data reporting requirements may subject them to monetary forfeitures of up to \$150,000 for each violation or each day of a continuing violation, up to a maximum of \$1,500,000 for any single act or failure to act that is a continuing violation. False statements or misrepresentations to the Commission may be punishable by fine or imprisonment under Title 18 of the U.S. Code.

## VI. Ordering Clauses

136. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 5, 201–205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, 201, 202, 203, 204, 205, 211, 215, 218, 219, 303(r), 332, 403, 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, the Report and Order, with all attachments, is adopted March 12, 2013, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rule(s), and except as specified in paragraph 137.

137. *It is further ordered* that we delegate authority to the Wireline Competition Bureau to implement a data collection in accordance with the terms of this Report and Order, and that this delegation of authority is effective upon adoption, *see* 47 U.S.C. 155(c).

138. *It is further ordered* that the data collection shall become effective upon announcement in the **Federal Register** of Office of Management and Budget approval and an effective date of the requirements.

139. *It is further ordered* that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

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

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2013-00278 Filed 1-10-13; 8:45 am]

**BILLING CODE 6712-01-P**