PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.348, the table entitled ''Washington—Carbon Monoxide'' is amended by revising the entry for ''Spokane Area Spokane County (part)'' to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Spokane Area: Spokane County (part). Spokane urban area (as defined by The Washington Department of Transportation urban area maps).	8–29–2005	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

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[FR Doc. 05–12713 Filed 6–28–05; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[WC Docket No. 04–36; FCC 05–116]

E911 Requirements for IP-Enabled Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules requiring providers of interconnected voice over Internet Protocol (VoIP) service—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN)—to supply enhanced 911 (E911) capabilities to all of their customers as a standard feature of the service, rather than as an optional enhancement. The rules further require interconnected VoIP service providers to provide E911 from wherever the customer is using the service, whether at home or away from home. These changes will enhance public safety and ensure E911 access to emergency services for users of interconnected VoIP services.

DATES: *Effective Date:* This rule is effective July 29, 2005, except for § 9.5, which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

Comment Date: Written comments by the public on the new and/or modified information collection requirements are due August 29, 2005.

Compliance Date: Subject to OMB approval, compliance with the customer notification requirements in § 9.5(e) is required by July 29, 2005. Subject to OMB approval, the compliance letter required by § 9.5(f) must be submitted to the Commission no later than November 28, 2005. Subject to OMB approval, compliance with the requirements in § 9.5(b) through (d) is not required until November 28, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1686.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order (Order) in WC Docket No. 04–36, FCC 05–116, adopted May 19, 2005, and released June 3, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *www.bcpiweb.com*. It is also available on the Commission's website at *http://www.fcc.gov*.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*.

Synopsis of the First Report and Order (Order)

1. *Background.* In the *Notice of Proposed Rulemaking* (NPRM) (69 FR 16193, March 29, 2004), we asked, among other things, about the potential applicability of ''basic 911,'' ''enhanced 911,'' and related critical infrastructure regulation to VoIP and other Internet Protocol (IP)-enabled services. Specifically, after noting that the Commission previously found in the *E911 Scope Order* (69 FR 6578, February 11, 2004) that it has statutory authority under sections 1, 4(i), and 251(e)(3) of the Communications Act of 1934, as amended (Act), to determine what entities should be subject to the Commission's 911 and E911 rules, the Commission sought comment on whether it should exercise its regulatory authority in the context of IP-enabled services. The Commission further sought comment on the appropriate criteria for determining whether and to what extent IP-enabled services should fall within the scope of its 911 and E911 regulatory framework, and whether IP-enabled services are technically and

operationally capable of meeting the Commission's basic and/or E911 rules or of providing analogous functionalities that would meet the intent of the 911 Act and the Commission's regulations.

2. *Discussion.* In this Order, we define ''interconnected VoIP service'' and require providers of this type of VoIP service to incorporate E911 service into all such offerings within the period of time specified below. We commit ourselves to swift and vigorous enforcement of the rules we adopt today. Because we have not decided whether interconnected VoIP services are telecommunications services or information services, we analyze the issues addressed in this Order primarily under our Title I ancillary jurisdiction to encompass both types of service. We decline to exempt providers of interconnected VoIP services from liability under state law related to their E911 services.

3. *Scope.* Our first task is to determine what IP-enabled services should be the focus of our concern. We begin by limiting our inquiry to VoIP services, for which some type of 911 capability is most relevant. The Commission previously has determined that customers today lack any expectation that 911 will function for non-voice services like data services. The record clearly indicates, however, that consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a ''regular telephone'' service. At least regarding the ability to provide access to emergency services by dialing 911, we find these expectations to be reasonable. If a VoIP service subscriber is able to receive calls from other VoIP service users and from telephones connected to the PSTN, and is able to place calls to other VoIP service users and to telephones connected to the PSTN, a customer reasonably could expect to be able to dial 911 using that service to access appropriate emergency services. Thus, we believe that a service that enables a customer to do everything (or nearly everything) the customer could do using an analog telephone, and more, can at least reasonably be expected and required to route 911 calls to the appropriate destination.

4. The E911 rules the Commission adopts today apply to those VoIP services that can be used to receive telephone calls that originate on the PSTN and can be used to terminate calls to the PSTN—''interconnected VoIP services.'' Although the Commission has not adopted a formal definition of ''VoIP,'' we use the term generally to include any IP-enabled services offering real-time, multidirectional voice functionality, including, but not limited to, services that mimic traditional telephony. Thus, an interconnected VoIP service is one we define for purposes of the present Order as bearing the following characteristics: (1) The service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user's location; (3) the service requires IP-compatible customer premise equipment (CPE); and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. We make no findings today regarding whether a VoIP service that is interconnected with the PSTN should be classified as a telecommunications service or an information service under the Act.

5. While the rules we adopt today apply to providers of all interconnected VoIP services, we recognize that certain VoIP services pose significant E911 implementation challenges. For example, the mobility enabled by a VoIP service that can be used from any broadband connection creates challenges similar to those presented in the wireless context. These ''portable'' VoIP service providers often have no reliable way to discern from where their customers are accessing the VoIP service. The Commission's past experience with setting national rules for 911/E911 service is informative, and we expect that our adoption today of E911 service obligations for providers of interconnected VoIP service will speed the further creation and adoption of such services, similar to the manner in which the Commission's adoption of E911 service obligations in the wireless context helped foster the widespread availability of E911 services for mobile wireless users, where it formerly was not possible for wireless carriers automatically to determine the precise geographic location of their customers. We recognize and applaud the progress that has already been made to ensure that VoIP customers have E911 services. We stress, however, that should the need arise, we stand ready to expand the scope or substance of the rules we adopt today if necessary to ensure that the public interest is fully protected.

6. *Authority.* We conclude that we have authority under Title I of the Act to impose E911 requirements on interconnected VoIP providers, and commenters largely agree. In addition, we conclude that we have authority to adopt these rules under our plenary numbering authority pursuant to section 251(e) of the Act. We find that regardless of the regulatory classification, the Commission has ancillary jurisdiction to promote public safety by adopting E911 rules for interconnected VoIP services. This Order, however, in no way prejudges how the Commission might ultimately classify these services. To the extent that the Commission later finds these services to be telecommunications services, the Commission would have additional authority under Title II to adopt these rules.

7. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various responsibilities.'' Both predicates for ancillary jurisdiction are satisfied here.

8. First, based on sections 1 and 2(a) of the Act, coupled with the definitions set forth in section 3(33) (''radio communication'') and section 3(52) (''wire communication''), we find that interconnected VoIP is covered by the Commission's general jurisdictional grant. Specifically, section 1 states that the Commission is created ''[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States * * * a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,'' and that the agency ''shall execute and enforce the provisions of th[e] Act.'' Section 2(a), in turn, confers on the Commission regulatory authority over all interstate communication by wire or radio. In the NPRM, the Commission adopted no formal definition of ''VoIP'' but used the term generally to include ''any IP-enabled services offering real-time, multidirectional voice functionality, including, but not limited to, services that mimic traditional telephony.'' Recently, in the *Vonage Order*, the Commission found that Vonage's DigitalVoice service—an interconnected VoIP service—is subject to the Commission's interstate jurisdiction. Consistent with that conclusion, we find that interconnected VoIP services are covered by the statutory definitions of ''wire communication'' and/or ''radio communication'' because they involve ''transmission of [voice] by aid of wire, cable, or other like connection * * *'' and/or ''transmission by radio * * *'' of voice. Therefore, these services come within the scope of the Commission's subject matter jurisdiction granted in section 2(a) of the Act.

9. Second, our analysis requires us to evaluate whether imposing a E911 requirement is reasonably ancillary to the effective performance of the Commission's various responsibilities. Based on the record in this matter, we find that the requisite nexus exists. The Act charges the Commission with responsibility for making available ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service * * * for the purpose of promoting safety of life and property through the use of wire and radio communication.'' In light of this statutory mandate, promoting an effective nationwide 911/E911 emergency access system has become one of the Commission's primary public safety responsibilities under the Act. As the Commission has recognized, ''[i]t is difficult to identify a nationwide wire or radio communication service more immediately associated with promoting safety of life and property than 911.'' Indeed, the Commission has previously relied on Title I to satisfy both prongs of the standard for asserting ancillary jurisdiction: (1) Subject matter jurisdiction; and (2) the statutory goal furthered by the regulation. For example, in *Rural Telephone Coalition v. FCC*, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld the Commission's assertion of ancillary jurisdiction to establish a funding mechanism to support universal service in the absence of specific statutory authority as ancillary to its responsibilities under section 1 of the Act to ''further the objective of making communications service available to all Americans at reasonable charges.'' Thus, we conclude that as more consumers begin to rely on interconnected VoIP services for their communications needs, the action we take here ensures that the Commission continues to ''further the achievement of long-established regulatory goals'' to ''promot[e] safety of life and property.''

10. Our actions today are consistent with, and a necessary extension of, our prior exercises of authority to ensure public safety. Since 1996, the Commission has acted to impose 911/E911 rules on providers of new technologies. Since that time, the Commission has affirmed and expanded on those efforts by exercising jurisdiction over other services to impose 911/E911 requirements, relying primarily on its Title I authority. That exercise of authority has been ratified, not rebuked, by Congress.

11. Further, we note that our actions here are consistent with other provisions of the Act. For example, we are guided by section 706, which directs the Commission (and state commissions with jurisdiction over telecommunications services) to encourage the deployment of advanced telecommunications capability to all Americans by using measures that ''promote competition in the local telecommunications market'' and removing ''barriers to infrastructure investment.'' Internet-based services such as interconnected VoIP are commonly accessed via broadband facilities (*i.e.*, advanced telecommunications capabilities under the 1996 Act). The uniform availability of E911 services may spur consumer demand for interconnected VoIP services, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706. Indeed, the Commission's most recent *Fourth Section 706 Report to Congress* recognizes the nexus between VoIP services and accomplishing the goals of section 706.

12. Moreover, as stated above, in recognition of the critical role 911/E911 services play in achieving the Act's goal of promoting safety of life and property, Congress passed the 911 Act, which among other things made 911 the universal emergency telephone number for both wireline and wireless telephone service for the nation. In the 911 Act, Congress made a number of findings regarding wireline and wireless 911 services, including that ''improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce,'' and that ''emerging technologies can be a critical component of the end-to-end communications infrastructure connecting the public with emergency [services].'' Thus, we believe that our action here to impose E911 obligations on interconnected VoIP providers is consistent with Congress' public safety policy objectives.

13. Finally, as an additional and separate source of authority for the requirements we impose on providers of interconnected VoIP service in this Order, we rely on the plenary numbering authority over U.S. North American Numbering Plan (NANP) numbers Congress granted this Commission in section 251(e) of the Act and, in particular, Congress' direction to use its plenary numbering authority to designate 911 as the universal emergency telephone number within the United States, which ''shall apply to both wireline and wireless telephone service.'' We exercise our authority under section 251(e) of the Act because interconnected VoIP providers use NANP numbers to provide their services.

14. When the Commission initially implemented the 911 Act, it took actions similar to those we take today under its numbering authority. For instance, in the order implementing the 911 Act, the Commission exercised federal jurisdiction over the establishment of the deadlines by when all carriers had to provide 911 functionality, and adopted various deadlines depending on such things as whether a local community had established a public safety answering point (PSAP). The Commission also required carriers to implement certain switching and routing changes to their networks. Specifically, the Commission required all carriers to ''implement a permissive dialing period, during which emergency calls will be routed to the appropriate emergency response point using either 911 or the seven-or ten-digit number.'' In order to achieve this, carriers had to ''prepare and modify switches to 'translate' the three-digit 911 dialed emergency calls at the appropriate network points to the seven- or ten-digit emergency number in use by those PSAPs, and, subsequently, route the calls to them.'' The Commission also recognized that the transition to 911 in general required more network changes than required by translation.

15. The Commission's authority to require network changes to provide the E911 features that have long been central to the nation's 911 infrastructure is included within Congress' directive to the Commission to require the establishment of 911 as a ''universal emergency telephone number * * * for reporting an emergency to appropriate authorities and requesting assistance.''

16. *Requirements.* In this Order, we adopt an immediate E911 solution that applies to all interconnected VoIP services. We find that this requirement most appropriately discharges the Commission's statutory obligation to promote an effective nationwide 911/E911 emergency access system by recognizing the needs of the public safety community to get call back and location information and balancing those needs against existing technological limitations of interconnected VoIP providers. With regard to portable interconnected VoIP services, however, we intend to adopt in a future order an advanced E911 solution for interconnected VoIP that must include a method for determining a user's location without assistance from

the user as well as firm implementation deadlines for that solution.

17. *Enhanced 911 Service.* We require that, within 120 days of the effective date of this Order, an interconnected VoIP provider must transmit all 911 calls, as well as a call back number and the caller's ''Registered Location'' for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers under section 64.3001 of the Commission's rules. These calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network, and the Registered Location must be available from or through the ALI Database. As explained infra, however, an interconnected VoIP provider need only provide such call back and location information as a PSAP, designated statewide default answering point, or appropriate local emergency authority is capable of receiving and utilizing. While 120 days is an aggressively short amount of time in which to comply with these requirements, the threat to public safety if we delay further is too great and demands near immediate action.

18. Interconnected VoIP providers may satisfy this requirement by interconnecting indirectly through a third party such as a competitive local exchange carrier (LEC), interconnecting directly with the Wireline E911 Network, or through any other solution that allows a provider to offer E911 service as described above. As an example of the first type of arrangement, Level 3 offers a wholesale product that allows certain interconnected VoIP providers to provide E911 service to their customers. 8x8, Inc. recently announced that it is utilizing Level 3's service to provide E911 service to its Packet8 service subscribers in 2,024 rate centers covering 43 U.S. states. Likewise, Intrado has indicated that it is prepared to operate as a competitive LEC in a number of states to provide indirect interconnection to interconnected VoIP providers, and Pac-West Telecom is offering a similar service in ''virtually 100%'' of the state of California. We note that the Commission currently requires LECs to provide access to 911 databases and interconnection to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section 271(c)(2)(B)(vii) of the Act. We expect that this would include all the elements necessary for telecommunications carriers to provide 911/E911 solutions that are consistent with the requirements of this Order, including NENA's I2 or wireless E911-like solutions.

19. At the same time, the record indicates that incumbent LECs are increasingly offering E911 solutions that allow VoIP providers to interconnect directly to the Wireline E911 Network through tariff, contract, or a combination thereof. For example, Qwest has tariffed E911 offerings that are currently available to VoIP providers and can be coupled with third party service offerings to enable the provision of E911 service to portable interconnected VoIP services, including those that allow their end users to use non-native NPA–NXX numbers. Verizon is developing an E911 solution for interconnected VoIP providers that is comparable to the solution it offers for wireless E911. Verizon has announced that it will offer this solution in New York City beginning in summer 2005 and will roll it out in other locations if the New York City model succeeds. BellSouth currently offers tariffed services similar to those that Qwest uses to provide its VoIP E911 solution and recently announced that it is offering interconnected VoIP providers access to 911 facilities equivalent to that which it offers commercial mobile radio service (CMRS) carriers. SBC has offered to negotiate commercial agreements with VoIP providers for direct connection to Selective Routers and ALI databases, comparable to the E911 access that SBC provides to competitive LECs. SBC further has established a new commercial offering that ''will enable VoIP providers to offer customers who use their service at a fixed location, such as their home'' full E911 service and has stated that it is ''willing to develop a wireless-like VOIP 911 capability for VOIP providers'' pending receipt of necessary technical information.

20. We are requiring that all interconnected VoIP 911 calls be routed through the dedicated Wireline E911 Network because of the importance of protecting consumers who have embraced this new technology. We recognize that compliance with this obligation is necessarily dependent on the ability of the interconnected VoIP providers to have access to trunks and selective routers via competitive LECs that have negotiated access with the incumbent LECs, through direct connections to the incumbent LECs, or through third-party providers. We expect and strongly encourage all parties involved to work together to develop and deploy VoIP E911 solutions and we point out that incumbent LECs, as common carriers, are subject to sections 201 and 202 of the Act. The Commission will closely monitor these efforts within the industry and will not hesitate to take further action should that be necessary.

21. By requiring that all 911 calls be routed via the dedicated Wireline E911 Network, we are requiring interconnected VoIP service providers to provide E911 service only in those areas where Selective Routers are utilized. We expect that few VoIP 911 calls will be placed in areas that are not interconnected with a dedicated Wireline E911 Network. We further note that nothing in this Order prevents interconnected VoIP providers from entering into mutually acceptable 911 call termination arrangements with PSAPs that are not interconnected with a dedicated Wireline E911 Network.

22. *Service Level Obligation.* For the purposes of these requirements, the phrase ''all 911 calls'' is defined as ''any voice communication initiated by an interconnected VoIP user dialing 911.'' We recognize that not all PSAPs will immediately be capable of receiving and utilizing the call back number and Registered Location information associated with the E911 requirements outlined above. By way of example, NENA estimates that approximately 26.6 percent of all PSAPs are not currently capable of receiving and utilizing wireless E911 Phase I data. We therefore hold that the E911 requirements set forth above shall be applicable when an interconnected VoIP provider provides service to a Registered Location only to the extent that the PSAP, designated statewide default answering point, or appropriate local emergency authority designated to serve that Registered Location is capable of receiving and utilizing the data, such as Automatic Location Identification (ALI) or Automatic Numbering Information (ANI), associated with those requirements. Even in those areas where the PSAP is not capable of receiving or processing location or call back information, however, we conclude that interconnected VoIP providers must transmit all 911 calls to the appropriate PSAP via the Wireline E911 Network. To be clear, this means that interconnected VoIP providers are always required to transmit all 911 calls to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority utilizing the Selective Router, the trunk line(s) between the Selective Router and the PSAP, and such other elements of the Wireline E911 Network as are necessary in those areas where Selective Routers are utilized.

23. We further hold that the obligation to determine what type of information, such as ALI or ANI, each PSAP is capable of receiving and utilizing rests with the provider of interconnected VoIP services. There is no limit to the number of entities that may engage in the provision of interconnected VoIP services in a given geographic area. It would be unreasonable to require PSAPs to attempt to inform every provider of interconnected VoIP services when the PSAP is prepared to receive and utilize the information associated with E911 service.

24. We decline at this time to adopt performance standards regarding how much time may elapse after an end user updates the Registered Location before the provider has taken such actions as are necessary to provide that end user with the level of E911 service specified in this Order.

25. We also require interconnected VoIP providers to take certain additional steps to minimize the scope of the 911 issues associated with their service and to facilitate their compliance with our new VoIP E911 rules, as explained below. First, we require interconnected VoIP providers to obtain, and facilitate updating of, customer location information. Second, we preclude interconnected VoIP providers from requiring subscribers to ''opt-in'' or allowing subscribers to ''opt-out'' of 911 services and expect that VoIP providers will notify their customers of the limitations of their 911 service offerings.

26. *Registered Location Requirement.* We recognize that it currently is not always technologically feasible for providers of interconnected VoIP services to automatically determine the location of their end users without end users' active cooperation. We therefore require providers of interconnected VoIP services to obtain location information from their customers. Specifically, interconnected VoIP providers must obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized. Furthermore, providers of interconnected VoIP services that can be utilized from more than one physical location must provide their end users one or more methods of updating information regarding the user's physical location. Although we decline to specify any particular method, we require that any method utilized allow an end user to update his or her Registered Location at will and in a timely manner, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. We caution interconnected VoIP providers against charging customers to update their Registered Location, as this would discourage customers from doing so and therefore undermine this solution. The most recent location provided to an interconnected VoIP provider by a customer is the ''Registered Location.'' Interconnected VoIP providers can comply with this requirement directly or by utilizing the services of a third party.

27. *Customer Requirements.* In light of the recent incidents involving problems with 911 access from interconnected VoIP services, it is clear that not all providers of interconnected VoIP are including E911 as a standard feature of their services. We find that allowing customers of interconnected VoIP providers to opt-in to or, for that matter, opt-out of E911 service is fundamentally inconsistent with our obligation to ''encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs.'' Thus, interconnected VoIP providers must, as a condition of providing that service to a consumer, provide that consumer with E911 service as outlined in the requirements above.

28. Further, although many VoIP providers include explanations of the limitations of their 911-like service (or lack thereof) in the Frequently Asked Questions sections on their web sites or in their terms of service, recent incidents make clear that consumers in many cases may not understand that the reasonable expectations they have developed with respect to the availability of 911/E911 service via wireless and traditional wireline telephones may not be met when they utilize interconnected VoIP services. In order to ensure that consumers of interconnected VoIP services are aware of their interconnected VoIP service's actual E911 capabilities, by the effective date of this Order, we require that all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service. VoIP providers shall obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory. In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers shall distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on and/or near the CPE used in conjunction with the interconnected VoIP service.

29. Additional customer education efforts may well be necessary for users of portable interconnected VoIP, for whom E911 service requires that they notify their service provider affirmatively of their location. For example, customers of portable interconnected VoIP services likely will need to be instructed on how to register their locations with their providers, the need to update that information promptly when they relocate, and how to confirm that the registration is effective.

30. *Compliance Letter.* We require all interconnected VoIP providers to submit a letter to the Federal Communications Commission detailing their compliance with our rules no later than 120 days after the effective date of this Order. The letter and all other filings related to this Order should be filed with the Commission's Secretary in WC Docket No. 05–196 on a going-forward basis.

31. Because of the vital public safety interests at stake in this proceeding, we are committed to ensuring compliance with the rules we adopt in this Order. Failure to comply with these rules cannot and will not be tolerated, as noncompliance may have a direct effect on the lives of those customers who choose to obtain service from the interconnected VoIP providers covered by this Order. Interconnected VoIP providers who do not comply fully with the requirements set forth in this Order will be subject to swift enforcement action by the Commission, including substantial proposed forfeitures and, in appropriate cases, cease and desist orders and proceedings to revoke any Commission licenses held by the interconnected VoIP provider.

32. *911 Funding.* We believe that the requirements we establish today will significantly expand and improve interconnected VoIP 911 service while substantially reducing the threat to 911 funding that some VoIP services currently pose. First, we recognize that while some state laws today may already require 911 funding contributions from providers of interconnected VoIP, interconnected VoIP providers may not be covered by existing state 911 funding mechanisms in other states. But even in the latter circumstance, the record does not indicate that states are receiving no 911

funding contributions from interconnected VoIP providers. On the contrary, the record indicates that many interconnected VoIP providers currently are contributing to state 911 funding mechanisms. In addition, states have the option of collecting 911 charges from wholesale providers with whom interconnected VoIP providers contract to provide E911 service, rather than assessing those charges on the interconnected VoIP providers directly. For example, we have explained that interconnected VoIP providers often enlist a competitive LEC partner in order to obtain interconnection to the Wireline E911 Network, and we believe that as a result of this Order, many more will do so. In that situation, states may impose 911 funding obligations on the competitive LEC partners of interconnected VoIP providers, regardless of whether the VoIP providers themselves are under any obligation to contribute. Similarly, states may be able to impose funding obligations on systems service providers, such as incumbent LECs, that provide direct interconnection to interconnected VoIP providers. We believe that the ability to assess 911 funds on interconnected VoIP providers indirectly should narrow any gap in 911 funding attributable to consumers switching to interconnected VoIP service.

33. Second, the record indicates that the network components that have been developed to make wireless E911 possible can also be used for VoIP E911, which should make the implementation process simpler and far less expensive than the initial upgrades necessary for wireless E911. For that reason, we do not expect the rules we adopt today to impose substantial implementation costs on PSAPs. In short, we believe that the rules we adopt today will neither contribute to the diminishment of 911 funding nor require a substantial increase in 911 spending by state and local jurisdictions.

34. *Liability.* We decline to exempt providers of interconnected VoIP service from liability under state law related to their E911 services. Although the NPRM did not directly address the issue, Intrado, among others, requests that the Commission insulate these VoIP providers from liability to the same extent that Congress insulated wireless carriers from liability related to the provision of 911/E911 service in the wireless context. In the 911 Act, Congress gave wireless carriers providing 911 service liability protection equal to that available to wireline carriers for 911 calls. Congress has enacted no similar protection for providers of interconnected VoIP service. As the Commission has said in an analogous context, before we would consider taking any action to preempt liability under state law, the Commission would need to demonstrate that limiting liability is essential to achieving the goals of the Act.

35. No commenter has identified a source of authority for the Commission to limit liability in this way. Limiting liability related to the use or provision of E911 services is not necessary to the creation or use of E911 services, and we are not persuaded that absent the liability protection sought by Intrado and others, interconnected VoIP providers will be unwilling or unable to provide E911 services. Rather, the record shows that some interconnected VoIP providers have already begun deploying E911 services. In addition, to the extent individual interconnected VoIP providers believe they need this type of liability protection, they may seek to protect themselves from liability for negligence through their customer contracts and through their agreements with PSAPs, as some interconnected VoIP providers have done.

Final Paperwork Reduction Act Analysis

36. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due August 29, 2005.

Final Regulatory Flexibility Analysis

37. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. We received comments specifically directed toward the IRFA from three commenters. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Rules

38. The Order establishes rules requiring providers of interconnected VoIP—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the PSTN—to provide E911 capabilities to their customers as a standard feature of service. The Order requires providers of interconnected VoIP service to provide E911 service no matter where the customer is using the service, whether at home or away.

39. The Order is in many ways a necessary and logical follow-up to the *Vonage Order* issued late last year. In that order, the Commission determined that Vonage's DigitalVoice service—an interconnected VoIP service—cannot be separated into interstate and intrastate communications and that this Commission has the responsibility and obligation to decide whether certain regulations apply to DigitalVoice and other IP-enabled services having similar capabilities. The *Vonage Order* also made clear that questions regarding what regulatory obligations apply to providers of such services would be addressed in the pending *IP-Enabled Services* proceeding. In accord with that statement, the Order takes critical steps to advance the goal of public safety by imposing E911 obligations on certain VoIP providers.

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

40. In this section, we respond to comments filed in response to the IRFA. A more detailed FRFA is contained in the Order. In addition, to the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order.

41. We disagree with SBA and Menard that the Commission should postpone acting in this proceeding—thereby postponing imposing E911 obligations on interconnected VoIP service providers—and instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives. We believe the additional steps suggested by SBA and Menard are unnecessary because, as described below, small entities already have received sufficient notice of the issues addressed in the Order and because the Commission, as requested by the VON Coalition, has considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities, and, to the extent feasible, has implemented those less burdensome alternatives.

42. The NPRM specifically sought comment on what 911/E911 obligations should apply in the context of IP-enabled services, and discussed the criteria the Commission previously has

used to determine the scope of its existing 911/E911 rules. While the NPRM did not specify particular rules the Commission might adopt—and the IRFA therefore did not catalogue the effects that such particular rules might have on small businesses—the Commission provided notice to parties regarding the range of policy outcomes that might result from the Order. A summary of the NPRM was published in the **Federal Register** (69 FR 16193, March 29, 2004) and we believe that such publication constitutes appropriate notice to small businesses subject to this Commission's regulation.

43. Moreover, we note that we have attempted to balance the economic interests of small businesses with the public's great interest in access to E911 services when using interconnected VoIP services. The Order discusses how E911 service is critical to our nation's ability to respond to a host of crises and that the public has come to rely on the life-saving benefits of such services in emergency situations. While the Commission sought comment on, and considered, ways that the public safety could be protected through access to E911 services that are less burdensome to small businesses than the imposition of E911 obligations, the Commission concluded that it was important for all interconnected VoIP service providers to participate in protecting the public safety. As SBA notes, many VoIP providers are likely to be small businesses. SBA claims that ''[t]hese small providers are developing a nascent technology and are especially vulnerable to disproportionate regulatory costs.'' Nevertheless, as discussed in the Order, we believe it is reasonable to expect any business electing to interconnect with the PSTN to the extent required to provide interconnected VoIP service also to provide E911 service in order to protect the public interest. Small businesses may still offer VoIP service without being subject to the rules adopted in the Order by electing not to provide an interconnected VoIP service. We therefore have provided alternatives for small entities.

44. We disagree with Menard's contention that the Commission did not meet its obligations under the RFA because it failed to list as a significant alternative to the proposed rulemaking imposing economic regulation on the underlying facilities of cable carriers. The rules we adopted in the Order apply to cable operators that provide interconnected VoIP service. Moreover, we reject the above contention as insufficient to achieve our goal of ensuring that users of interconnected VoIP service have access to E911, as well as rejecting it for the reasons already provided generally. As discussed in the Order, there currently is no way for portable VoIP providers reliably and automatically to provide location information to PSAPs without the customer's active cooperation. Not only is the provider of an interconnected VoIP service the entity actively involved in routing the calls of users of interconnected VoIP service, but it is the entity that has the relationship with the customer who currently plays an essential role in providing accurate location information; hence, it is reasonable to impose E911 rules on that interconnected VoIP service provider. In addition, although the Commission determined that it was necessary to impose E911 obligations on all providers of interconnected VoIP service in order to ensure the ubiquitous availability of E911 service for users of interconnected VoIP service, the Commission minimized the burdens of this regulation by, for example, by requiring straightforward reporting requirements and by setting reasonable timetables for implementation of the rules adopted in the Order. The Commission minimized the burdens of this regulation by not mandating any particular technical solution; interconnected VoIP providers may connect directly to the Wireline E911 Network, connect indirectly through a third party, such as a competitive local exchange carrier, or through any other solution that allows a provider to offer E911 service.

45. We also disagree with Menard's contention that the Commission inappropriately failed to ''weigh the impact on non-affiliated regional Internet Service Providers of the consequence for the removal of all forms of economic regulation for broadband services provided by incumbent carriers.'' The Order does not remove ''all forms of economic regulation for broadband services provided by incumbent carriers,'' and would be an inappropriate forum for reconsideration of any such decision the Commission has made in other proceedings. The Commission reached its decision in the Order in full awareness and consideration of the Commission's other rules and to that extent satisfied Menard's request and SBA's request to consider how the requirements imposed in the Order overlap with other requirements imposed on small entities.

46. Finally, we reject claims that the present proceeding is not the appropriate docket in which to address what E911 obligations should be imposed on providers of interconnected VoIP service. The Commission provided proper notice that these issues would be addressed in this proceeding, and in the *Vonage Order* made clear that questions regarding what regulatory obligations apply to providers of a type of interconnected VoIP service would be addressed in this proceeding. Therefore, we do not accede to the preferences of some small businesses that the Commission resolve various other proceedings, including proceedings involving E911 requirements, prior to addressing issues in the *IP-Enabled Services* docket. We reject Menard's claim that the Commission is using the present rulemaking as a way of by-passing its statutory obligations under section 10 of the Telecommunications Act of 1996 (section 10) because that statutory section is not applicable to the present situation. Section 10 sets forth the Commission's obligation to forbear from existing regulation to a telecommunications carrier or a telecommunications service, or class of telecommunications carriers or telecommunications services, if certain criteria are satisfied. Prior to the Order, the Commission had not imposed E911 obligations on interconnected VoIP service providers. In addition, the Commission to date has not classified interconnected VoIP service as a telecommunications service.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

47. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

48. *Small Businesses*. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

49. *Small Organizations*. Nationwide, there are approximately 1.6 million small organizations.

50. *Small Governmental Jurisdictions*. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages,

school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

a. Telecommunications Service Entities

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

52. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. 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. The Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

53. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

54. *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. The Commission estimates that the majority of local resellers are small entities that may be affected by our action.

55. *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. The Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

56. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

57. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. 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. The Commission estimates that the majority of IXCs are small entities that may be affected by our action.

58. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The Commission estimates that the majority of OSPs are small entities that may be affected by our action.

59. *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. The Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

60. *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. We estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

61. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts. The majority of Satellite Telecommunications firms can be considered small.

62. The second category—Other Telecommunications—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' Under this second size standard, the majority of firms can be considered small.

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

64. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless

business is small if it has 1,500 or fewer employees. Under both categories and associated small business size standards, the majority of firms can be considered small.

65. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. Under this category and size standard, the great majority of firms can be considered small. We have estimated that 245 of the entities engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services are small under the SBA small business size standard.

66. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. Under this category and associated small business size standard, the majority of firms can be considered small. In the *Paging Third Report and Order*, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 346 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 341 are small, under the SBA-approved small business size standard.

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

68. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. We have estimated that 245 of the carriers who reported to us that they were engaged in the provision of wireless telephony are small under the SBA small business size standard.

69. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as ''an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

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

71. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not

developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. Under this second category and size standard, the majority of firms can be considered small. Assuming this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

72. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

73. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

74. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

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

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

77. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small''

business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

78. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus 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 noted, however, that the common carrier microwave fixed licensee category includes some large entities.

79. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

80. *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 the rules and polices adopted herein.

81. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

82. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. We conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

83. *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. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

84. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This

category provides that such a company is small if it employs no more than 1,500 persons. Under this size standard, the great majority of firms can be considered small.

85. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

b. Cable and OVS Operators

86. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. The Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

87. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The Commission estimates that there currently are fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

88. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, 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. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. 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 are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

89. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission concludes that up to 24 OVS operators might qualify as small businesses that may be affected by the rules and policies adopted herein.

c. Internet Service Providers

90. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. We estimate that the majority of these firms are small entities that may be affected by our action.

d. Other Internet-Related Entities

91. *Web Search Portals.* Our action pertains to 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 ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6 million or less in average annual receipts. We estimate that the majority of these firms are small entities that may be affected by our action.

92. *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 $21 million or less in average annual receipts. We estimate that the majority of these firms are small entities that may be affected by our action.

93. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' Our action pertains to VoIP services, which could be provided by entities that provide other services such as 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 $6 million or less in average annual receipts. We estimate that the majority of these firms are small entities that may be affected by our action.

94. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this new (2002) census category; that size standard is 500 or fewer employees. To assess the prevalence of small entities in this category, we will use 1997 Census Bureau data for a relevant, now-superseded census category, ''All Other Information Services.'' The SBA small business size standard for that prior category was $6 million or less in average annual receipts. We estimate that the majority of the firms in this current category are small entities that may be affected by our action.

95. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies

may also design software to meet the needs of specific users. The SBA has developed a small business size standard of $21 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. We estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

96. *Equipment Manufacturers.* The equipment manufacturers described in this section are merely indirectly affected by our current action, and therefore are not formally a part of this FRFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our decisions. These manufacturers may include: Wireless Communications Equipment Manufacturers; Telephone Apparatus Manufacturing; Electronic Computer Manufacturing; Computer Terminal Manufacturing; Other Computer Peripheral Equipment Manufacturing; Fiber Optic Cable Manufacturing; Other Communication and Energy Wire Manufacturing; Audio and Video Equipment Manufacturing; Electron Tube Manufacturing; Bare Printed Circuit Board Manufacturing; Semiconductor and Related Device Manufacturing; Electronic Capacitor Manufacturing; Electronic Resistor Manufacturing; Electronic Coil, Transformer, and Other Inductor Manufacturing; Electronic Connector Manufacturing; Printed Circuit Assembly (Electronic Assembly) Manufacturing; Other Electronic Component Manufacturing; and Computer Storage Device Manufacturing.

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

97. We are requiring interconnected VoIP service providers to collect certain information and take other actions to comply with our rules requiring interconnected VoIP service providers to supply E911 capabilities to their customers. The Order requires collection of information in four instances. First, interconnected VoIP providers must obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized, and must provide customers a way to update this information (*i.e.*, the ''Registered Location''). Second, interconnected VoIP providers must place the Registered Location information for their customers into, or make that information available through, ALI Databases maintained by local exchange carriers (and, in at least one case, a state government) across the country. Third, the Order requires all providers of interconnected VoIP service specifically to advise new and existing subscribers of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service, and to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood this advisory. Fourth, the Order requires all interconnected VoIP providers to submit a letter to the Commission detailing their compliance with the rules set forth in the Order no later than 120 days after the effective date of the Order.

98. We also impose other requirements on providers of interconnected VoIP service. Specifically, the Order requires that, within 120 days of the effective date of the Order, an interconnected VoIP provider must transmit all 911 calls, as well as a call back number and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers under section 64.3001 of the Commission's rules. These calls must be routed through the use of ANI or pseudo-ANI via the dedicated Wireline E911 Network, and the Registered Location must be available from or through the ALI Database. As explained in the Order, however, an interconnected VoIP provider need only provide such call back and location information as a PSAP, designated statewide default answering point, or appropriate local emergency authority is capable of receiving and utilizing. The obligation to determine what type of information, such as ALI or ANI, each PSAP is capable of receiving and utilizing rests with the provider of interconnected VoIP services.

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

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

100. The NPRM invited comment on a number of alternatives to the imposition of 911/E911 obligations on providers of interconnected VoIP service. For instance, the NPRM specifically sought comment on the effectiveness of alternatives to direct regulation to achieve the Commission's public policy goals of ensuring the availability of 911 and E911 capability. The Commission also sought comment on whether voluntary agreements among public safety trade associations, commercial IP-stakeholders, consumers, and state and local E911 coordinators and administrators could lead to VoIP subscribers receiving enhanced 911 functionality, and what the Commission could do to facilitate such agreements. The Commission also asked whether ''promulgation of best practices or technical guidelines [would] promote the provision of effective IP-based E911 services.'' The Commission also asked how it could provide for technological flexibility so that our rules allow for the development of new and innovative technologies in the event it concluded that mandatory requirements would be necessary.

101. In addition, the Commission sought comment on more general issues surrounding the possible imposition of a 911/E911 requirement for IP-enabled services, which could have prompted commenters to suggest other alternatives to the rules adopted in the Order. For instance, the Commission sought comment on what ways IP-enabled service providers currently seek to provide emergency services to their customers. The Commission also noted that the development and deployment of IP-enabled services is in its early stages, that these services are fast-changing and likely to evolve in ways that it cannot anticipate, and that imposition of regulatory mandates should be undertaken with caution. In this regard, the Commission sought comment on how to weigh the potential public benefits of requiring emergency calling and other public safety capabilities against the risk that regulation could slow technical and market development.

102. The Commission has considered each of the alternatives described above, and in the Order, imposes minimal regulation on small entities to the extent consistent with our goal of ensuring that users of interconnected VoIP service have access to appropriate emergency

services when they dial 911. As an initial matter, the Commission limited the scope of the Order to interconnected VoIP service providers. As a result, certain VoIP service providers are not subject to the E911 obligations imposed in the Order. Specifically, the Order does not apply to those entities not fully interconnected with the PSTN. Because interconnecting with the PSTN can impose substantial costs, we anticipate that many of the entities that elect not to interconnect with the PSTN, and which therefore are not subject to the rules adopted in the Order, are small entities. Small entities that provide VoIP services therefore also have some control over whether they will be subject to the E911 obligations adopted in the Order. Small businesses may still offer VoIP service without being subject to the rules adopted in the Order by electing not to provide an interconnected VoIP service.

103. However, as stated above, we must assess the interests of small businesses in light of the overriding public interest in access to E911 services when using interconnected VoIP services. The Order discusses that E911 service is critical to our nation's ability to respond to a host of crises and that the public has come to rely on the life-saving benefits of such services in emergency situations. Therefore, the Commission concluded that it was important for all interconnected VoIP service providers to participate in protecting the public safety, regardless of their size. The Commission therefore rejected solutions that would rely on the voluntary agreement of VoIP service providers. The record indicated that this alternative had not resulted in, and was not likely soon to result in, ubiquitous access to E911 among users of interconnected VoIP service, which is the Commission's goal.

104. While the rules adopted in the Order apply to all providers of interconnected VoIP service, the Commission attempted to minimize the impact of the new rules on all entities, including small entities. For instance, while it is essential that interconnected VoIP service providers interconnect with the Wireline E911 Network, the Commission employed performance rather than design standards to achieve this result. Thus, rather than mandating a particular technical solution, the Order allows interconnected VoIP providers to connect directly to the Wireline E911 Network, or connect indirectly through a third party, such as a competitive LEC, or through any other solution that allows a provider to offer E911 service, which thereby allows for technological and commercial flexibility, and leaves room under the new rules for the development of new and innovative technologies. The Commission also declined to specify any particular method by which interconnected VoIP service providers must enable their customers to provide and update their Registered Location. The Commission also declined to specify any particular method by which interconnected VoIP service providers must advise new and existing subscribers of the E911 service limitations of their interconnected VoIP service and declined to specify any particular method by which acknowledgments of such limitations must be gathered and stored. The Commission expects these decisions will help small entities comply with the rules adopted in the Order in the most practical means possible. In addition, the Commission in the Order imposes straightforward and limited reporting requirements, and sets reasonable timetables. For example, regarding reporting requirements, the Commission simply requires providers of interconnected VoIP service to file a letter detailing their compliance with our rules no later than 120 days after the effective date of the Order. In addition, while the Commission's review of the record in this proceeding convinces us that ensuring reliable E911 service for users of interconnected VoIP service is essential, and therefore that the location information of such users who dial 911 should automatically be sent to the relevant PSAP, the Commission did not impose the obligation in the Order automatically to locate the interconnected VoIP service user in light of record evidence of the current state of technological development and the costs, including on small entities, of such an obligation. The Commission fully expects this situation to change in the near future, helped in part by the present Order.

105. We also note that by adopting E911 rules for providers of interconnected VoIP service at the present time, the Commission likely has saved small entities providing these services resources in the long run. For instance, in light of the importance of E911 service to the public, providers of interconnected VoIP service likely eventually would have been required by the Commission or Congress to provide E911 service. This could have involved ''costly and inefficient 'retrofitting' of embedded IP infrastructure'' for any interconnected VoIP service provider that had already adopted a E911 solution.

106. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. (A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register**.)

Ordering Clauses

107. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 251(e) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 251(e), 303(r), the Report and Order in WC Docket No. 04–36 *IS adopted*, and that part 9 of the Commission's rules, 47 CFR part 9, is added as set forth in the rule changes. The Order shall become effective July 29, 2005 subject to OMB approval for new information collection requirements. Accordingly, subject to such OMB approval: (i) Compliance within the customer notification requirements set forth in 47 CFR 9.5(e) is required by July 29, 2005; (ii) the compliance letter required by 47 CFR 9.5(f) must be submitted to the Commission no later than November 28, 2005; and (iii) compliance with the requirements in 47 CFR 9.5(b) through (d) is required by November 28, 2005.

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

List of Subjects in 47 CFR Part 9

Interconnected voice over internet protocol services, Communications, Telephone, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission is adding 47 CFR part 9 to read as follows:

PART 9—INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES

Sec.

9.1 Purpose.
9.3 Definitions.
9.5 E911 Service.

Authority: 47 U.S.C. 151, 154(i)-(j), 251(e), and 303(r) unless otherwise noted.

§ 9.1 Purpose.

The purpose of this part is to set forth the E911 service requirements and conditions applicable to interconnected Voice over Internet Protocol service providers.

§ 9.3 Definitions.

ANI. Automatic Number Identification, as such term is defined in § 20.3 of this chapter.

Appropriate local emergency authority. An emergency answering point that has not been officially designated as a Public Safety Answering Point (PSAP), but has the capability of receiving 911 calls and either dispatching emergency services personnel or, if necessary, relaying the call to another emergency service provider. An appropriate local emergency authority may include, but is not limited to, an existing local law enforcement authority, such as the police, county sheriff, local emergency medical services provider, or fire department.

Interconnected VoIP service. An interconnected Voice over Internet protocol (VoIP) service is a service that:

(1) Enables real-time, two-way voice communications;

(2) Requires a broadband connection from the user's location;

(3) Requires Internet protocol-compatible customer premises equipment (CPE); and

(4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

PSAP. Public Safety Answering Point, as such term is defined in § 20.3 of this chapter.

Pseudo Automatic Number Identification (Pseudo-ANI). A number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

Registered Location. The most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user.

Statewide default answering point. An emergency answering point designated by the State to receive 911 calls for either the entire State or those portions of the State not otherwise served by a local PSAP.

Wireline E911 Network. A dedicated wireline network that:

(1) Is interconnected with but largely separate from the public switched telephone network;

(2) Includes a selective router; and

(3) Is utilized to route emergency calls and related information to PSAPs, designated statewide default answering points, appropriate local emergency authorities or other emergency answering points.

§ 9.5 E911 Service.

(a) *Scope of Section.* The following requirements are only applicable to providers of interconnected VoIP services. Further, the following requirements apply only to 911 calls placed by users whose Registered Location is in a geographic area served by a Wireline E911 Network (which, as defined in § 9.3, includes a selective router).

(b) *E911 Service.* As of November 28, 2005:

(1) Interconnected VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section;

(2) Interconnected VoIP service providers must transmit all 911 calls, as well as ANI and the caller's Registered Location for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 64.3001 of this chapter, provided that ''all 911 calls'' is defined as ''any voice communication initiated by an interconnected VoIP user dialing 911;''

(3) All 911 calls must be routed through the use of ANI and, if necessary, pseudo-ANI, via the dedicated Wireline E911 Network; and

(4) The Registered Location must be available to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority from or through the appropriate automatic location information (ALI) database.

(c) *Service Level Obligation.* Notwithstanding the provisions in paragraph (b) of this section, if a PSAP, designated statewide default answering point, or appropriate local emergency authority is not capable of receiving and processing either ANI or location information, an interconnected VoIP service provider need not provide such ANI or location information; however, nothing in this paragraph affects the obligation under paragraph (b) of this section of an interconnected VoIP service provider to transmit via the Wireline E911 Network all 911 calls to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location and that has been designated for telecommunications carriers pursuant to § 64.3001 of this chapter.

(d) *Registered Location Requirement.* As of November 28, 2005, interconnected VoIP service providers must:

(1) Obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized; and

(2) Provide their end users one or more methods of updating their Registered Location, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. Any method utilized must allow an end user to update the Registered Location at will and in a timely manner.

(e) *Customer Notification.* Each interconnected VoIP service provider shall:

(1) Specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service. Such circumstances include, but are not limited to, relocation of the end user's IP-compatible CPE, use by the end user of a non-native telephone number, broadband connection failure, loss of electrical power, and delays that may occur in making a Registered Location available in or through the ALI database;

(2) Obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood the advisory described in paragraph (e)(1) of this section; and

(3) Distribute to its existing subscribers warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the equipment used in conjunction with the interconnected VoIP service. Each interconnected VoIP provider shall distribute such warning stickers or other appropriate labels to each new subscriber prior to the initiation of that subscriber's service.

(f) *Compliance Letter.* All interconnected VoIP providers must

submit a letter to the Commission detailing their compliance with this section no later than November 28, 2005.

[FR Doc. 05–12828 Filed 6–28–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1612; MB Docket No. 04–370, RM–11081; MB Docket No. 04–371, RM–11082; MB Docket No. 04–388, RM–11089; MB Docket No. 04–390, RM–11091; and MB Docket No. 04–391, RM–11092]

Radio Broadcasting Services; Blythe, CA; Celoron, NY; Crystal Falls, MI; Laona, WI; and Wells, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Results Broadcasting of Iron Mountain, Inc., allots Channel 280C2 at Crystal Falls, Michigan, as the community's third local FM service. Channel 280C2 can be allotted to Crystal Falls, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.3 km (15.1 miles) southwest of Crystal Falls. The coordinates for Channel 280C2 at Crystal Falls, Michigan, are 45–57–22 North Latitude and 88–33–46 West Longitude. Concurrence in the allotment is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Although Canadian concurrence has been requested, notification has not been received. If a construction permit for Channel 280C2 at Crystal Fall, Michigan, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: ''Operation with the facilities specified herein for Crystal Falls, Michigan, is subject to the modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada.'' *See* **SUPPLEMENTARY INFORMATION** *infra*.

DATES: Effective July 25, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 04–370, 04–371, 04–388, 04–390, and 04–391, adopted June 8, 2005, and released June 10, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

The Audio Division further, at the request of Results Broadcasting of Iron Mountain, Inc., allots Channel 272C3 at Laona, Wisconsin, as the community's first local FM service. Channel 272C3 can be allotted to Laona, Wisconsin, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.1 km (6.9 miles) north of Laona. The coordinates for Channel 272C3 at Laona, Wisconsin, are 45–39–30 North Latitude and 88–43–20 West Longitude. Concurrence in the allotment is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Although Canadian concurrence has been requested, notification has not been received. If a construction permit for Channel 272C3 at Laona, Wisconsin, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: ''Operation with the facilities specified herein for Laona, Wisconsin, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada.''

The Audio Division, at the request of Linda A. Davidson, allots Channel 239B at Blythe, California, as the community's second local FM service. Channel 239B can be allotted to Blythe, California, in compliance with the Commission's minimum distance separation requirements without site restriction at center city reference coordinates. The coordinates for Channel 239B at Blythe, California, are 33–37–02 North Latitude and 114–35–20 West Longitude. Concurrence in the allotment is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Although Mexican concurrence has been requested, notification has not been received. If a construction permit for Channel 239B at Blythe, California, is granted prior to receipt of formal concurrence by the Mexican government, the authorization will include the following condition: ''Operation with the facilities specified herein for Blythe, California, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Mexico-United States FM Broadcast Agreement, or if specifically objected to by the Government of Mexico.''

The Audio Division, at the request of Dana J. Puopolo, Inc., allots Channel 237A at Celoron, New York, as the community's first local FM service. Channel 237A can be allotted to Celoron, New York, in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.4 km (0.2 miles) southeast of Celoron. The coordinates for Channel 237A at Celoron, New York, are 42–06–24 North Latitude and 79–16–53 West Longitude. Concurrence in the allotment is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Although Canadian concurrence has been requested, notification has not been received. If a construction permit for Channel 237A at Celoron, New York, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: ''Operation with the facilities specified herein for Celoron, New York, is subject to the modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada.''

The Audio Division, at the request of Charles Crawford, allots Channel 254A at Wells, Texas, as the community's second local FM service. Channel 254A can be allotted to Wells, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.6 km (1.0 miles) west of Wells. The coordinates for Channel 254A at Wells, Texas, are 31–29–35 North Latitude and 94–57–20 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.