

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

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

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. This NPRM seeks comment on ways to reform the high-cost universal service program. Specifically, the NPRM seeks comment on the recommendation of the Joint Board regarding comprehensive reform of high-cost universal service support. The Joint Board recommended the creation of three distinct high-cost funds; a broadband fund, a mobility fund, and a provider of last resort fund. If the Commission ultimately adopts the Joint Board’s recommendations, new or additional reporting requirements may be required for carriers to receive support under a three-fund approach. Additionally, the NPRM incorporates by reference two NPRMs addressing the adoption of a reverse auctions approach for distributing high-cost support, and the elimination of the identical support

rule for competitive eligible telecommunications carriers. Projected reporting, recordkeeping, and other compliance requirements are discussed in the IRFAs of those NPRMs.

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

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and 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 part thereof, for small entities. 5 U.S.C. 603(c).

28. This NPRM seeks comment on ways to reform the high-cost universal service program, including recommendations issued by the Joint Board. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. To the degree that the other NPRMs that the NPRM includes by reference offer alternatives that may minimize the significant economic impact on small entities, those alternatives will be considered as well.

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

29. None.

Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) through (j), 201 through 205, 214, 254, 403 and §§ 1.1, 1.411 through 1.419, and 1.1200 through 1.1216 of the Commission’s rules, 47 CFR 1.1, 1.411 through 1.419, 1.1200 through 1.1216, this Notice of Proposed Rulemaking Is Adopted.

31. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–4143 Filed 3–3–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 63

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 08–5]

High-Cost Universal Service Support; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to eligible telecommunications carriers serving rural, insular, and high-cost areas.

DATES: Comments are due on or before April 3, 2008 and reply comments are due on or before May 5, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–337 and CC Docket No. 96–45, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission’s Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response. Include the docket number in the subject line of the message.

- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20544.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* FCC504@fcc.gov or *phone:* 202–418–0530 or *TTY:* 202–418–0432.

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

FOR FURTHER INFORMATION CONTACT:

Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, 202-418-7400 or TTY: 202-418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5, adopted January 9, 2008, and released January 29, 2008. 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.

The 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 <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Initial Paperwork Reduction Act of 1995 Analysis:

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

Synopsis of the Notice of Proposed Rulemaking

Introduction

1. In this NPRM, we seek comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to eligible telecommunications carriers (ETCs) serving rural, insular, and high-cost areas. As discussed below, in a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. We tentatively conclude that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. We seek comment in this NPRM on a number of specific issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism.

Background

2. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition. Public Law 104-104. Section 254(b) of the Act, which was added by the 1996 Act, directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish. Among other things, there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and consumers in all regions of the nation should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates. 47 U.S.C. 254(b)(1), (3), (5). Section 254(e) of the Act provides that only ETCs designated under section 214(e) shall be eligible to receive federal universal service support, and that any such support should be explicit and sufficient to achieve the purposes of that section.

3. In the *Universal Service First Report and Order*, the Commission recognized certain advantages of using competitive bidding to determine high-cost universal service support. 62 FR 32862, June 17, 1997. First, "a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for any given area." Second, "by encouraging more efficient carriers to submit bids reflecting their lower costs, another advantage of a properly structured competitive bidding system would be its ability to reduce the amount of support needed for universal service." The record at the time, however, was insufficient to support adoption of a competitive bidding mechanism. Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because of the expectation that there would be no competition in a significant number of rural, insular, or high-cost areas in the near future. Nonetheless, the Commission found that competitive bidding warranted further consideration.

4. More recently, there has been renewed interest in using competitive bidding to determine high-cost universal service support. The Joint

Board currently is reviewing the Commission's rules relating to high-cost universal service support in service areas in which competitive ETCs receive support and high-cost universal service support for rural carriers. *Federal-State Joint Board on Universal Service*, 67 FR 70703, November 26, 2002 (*ETC/Portability Referral Order*); *Federal-State Joint Board on Universal Service*, 69 FR 48232, August 9, 2004 (*Rural Referral Order*). In August 2006, the Joint Board sought comment on the merits of using auctions to determine high-cost universal service support. *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, 71 FR 50420, August 25, 2006. The Joint Board also sought comment on auctions in the ETC/Portability proceeding. *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, 68 FR 10429, March 5, 2003. In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions to determine support. *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, 22 FCC Rcd 2545 (2007). In his opening remarks, Chairman Kevin Martin explained that "reverse auctions could provide a technologically and competitively neutral means of controlling fund growth and ensuring a move to most efficient technology over time." In a public notice, released May 1, 2007, the Joint Board sought comment on various proposals for long term, comprehensive reform of the high-cost universal service support mechanisms, including the use of reverse auctions. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, 22 FCC Rcd 9023 (2007). The Joint Board also recommended that, as an interim measure, the Commission adopt a cap on competitive ETC support. *Recommended Decision*, 22 FCC Rcd 8998 (2007). The specific auction proposals filed during the course of this proceeding are briefly described below.

5. *CTIA Proposal*. In response to the *2006 Joint Board Public Notice*, CTIA—The Wireless Association® (CTIA) proposed a "winner-gets-more" reverse auction structure in which wireline and wireless ETCs would compete in the same auction. Under this proposal, the

winning bidder would receive the level of support it bid, and other auction participants would receive some lesser level of support. CTIA suggests two possible methods of calculating support for a non-winning bidder: (1) A percentage reduction in payment based on the difference between its bid and the winning bid; and (2) a percentage reduction in payment based on the difference between its bid and the winning bid, but also weighted by the share of customers of the winning bidder. CTIA supports the use of small areas, such as counties, as the geographic areas on which providers would bid.

6. *Verizon Proposal*. On February 9, 2007, Verizon proposed implementing competitive bidding on a limited basis, with the possibility of extending the use of auctions more widely after the Commission assesses the results. Under Verizon's proposal, the Commission would introduce auctions in areas in which multiple wireless competitive ETCs currently receive support to select a single winning wireless provider to receive federal high-cost support in that area. Once these auctions were completed, a separate set of auctions would be held in areas where there is at least one wireline competitive ETC. Both the incumbent local exchange carrier (LEC) and any wireline competitive ETCs would participate, and the auction would select a single wireline provider to receive high-cost support in that area. After reviewing its experience with the separate wireless and wireline auctions, the Commission could then consider holding a general auction in any area where there is a competitive ETC. Both wireline and wireless ETCs would participate, and the general auction would select a single ETC to receive the support determined by its bid. The Commission also could consider using the results of the auctions to adjust support of ETCs receiving support not yet determined by an auction.

7. Verizon also proposes an auction design that uses wire centers, at least initially, as the geographic areas for which "combinatorial" auctions would be held. This type of auction allows bidders flexibility to submit bids for individual wire centers, or bids for packages of wire centers. Bids would be for a flat amount of subsidy for a given area, or package of areas. The reserve amount would be based on current high-cost support amounts and would ensure that the support determined by the auction is no greater than the amount of support provided prior to the auction.

8. *Alltel Proposal*. On February 16, 2007, Alltel proposed a reverse auction

pilot program that would target additional funds to promote broadband deployment in unserved or underserved rural areas. In unserved or underserved zip code areas, any ETC could submit a bid for the minimum amount of universal service per line that it would need to make available broadband service, as well as the basic services currently supported by the high-cost program, to a minimum percentage of households in the zip code area within a specified period of time. In areas where an ETC can satisfy this standard without additional support beyond that already available under the existing high-cost program, Alltel claims that the winning bid might be zero. Each participating ETC would receive per-line funding only to the extent it provides broadband, as well as currently supported services to a customer line. The participant offering the lowest bid would receive the full bid amount for each broadband line it provides during the duration of the service term (e.g., five years). All other ETCs that commit to meeting the same broadband build-out requirements would also receive support, but at a slightly lower per-line rate than the winning bidder.

9. Alltel recommends that the bidding process be conducted in a manner similar to that used for spectrum auctions: A multiple round, combinatorial auction, in which participants can bid for any number of zip code areas. The reserve price in each zip code area would be set based on the current level of high-cost support disbursed to ETCs in the area, increased by a certain percentage for the presumably higher cost of broadband deployment. Alltel suggests, for example, establishing a maximum bid amount so that the total per-line support would not increase by more than 50 percent or 100 percent in any area where high-cost funds are already being disbursed to one or more ETCs.

Discussion

10. We seek comment generally on the advantages of using a reverse auction mechanism to determine the amount of high-cost universal service support distributed to ETCs. Technology and the marketplace have changed considerably since the Commission in 1997 found that competitive bidding mechanisms were unlikely to be useful in rural, insular, and high-cost areas because of the absence of competition in these markets. Since that time, many carriers, particularly wireless carriers, have become ETCs and receive support for serving high-cost areas. As a result of the policies and framework the Commission adopted at that time, the

Commission's rules now result in subsidizing multiple competitors to serve areas in which costs may be prohibitively expensive for even one carrier to serve without a subsidy. The increase in the number of ETCs receiving high-cost support over the past several years is placing significant and increasing pressure on the stability of the universal service fund. *Universal Service Contribution Methodology*, 71 FR 38781, July 10, 2006.

11. In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. Auctions have potential merit in that they allow direct market signals to be used as a supplement to, and possible replacement of, cost estimates made from either historical cost accounting data or forward-looking cost models, as is done under the current high-cost support programs. In an auction, bids would reflect each bidding ETC's cost estimates for serving the relevant geographic area. If a sufficient number of bidders compete in the auction, the winning bid might be close to the minimum level of subsidy required to achieve the desired universal service goals. In contrast, a support mechanism based on either a carrier's embedded costs or on a forward-looking cost model provides no incentives for ETCs to provide supported services at the minimum possible cost. In addition, an auction could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a given region. We tentatively conclude that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. There are a number of detailed issues regarding auctions and auction design that must be resolved in order for the Commission to implement an auction mechanism, however. We seek comment below on these specific issues.

Eligibility Requirements

12. We seek comment on eligibility requirements for bidders participating in reverse auctions. Section 254(e) states, in relevant part: "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." Therefore, we tentatively conclude that a bidder must hold an ETC designation covering the relevant geographic area prior to participating in an auction to determine high-cost support for that geographic area.

Single Winner Versus Multiple Winners

13. We seek comment on whether universal service support auctions should award high-cost support to a single winner or to multiple winners. Should only the carrier submitting the lowest bid be allowed to receive the subsidy? Should all ETCs participating in the auction receive support, and if so, should it be the same level of support, or different amounts of support as suggested in the CTIA and Alltel proposals? We ask commenters that favor multiple-winner auctions in which different amounts of support go to different bidders to explain how the different levels of support would be determined. Alternatively, should there be a fixed number of winners greater than one? If there are a fixed number of winners receiving support, should the winning bidders receive the same amount of support (i.e., the same amount as the lowest bidder), or should the lowest bidder receive more?

14. We seek comment on the advantages and disadvantages of a single-winner auction versus a multiple-winner auction format. As mentioned above, if only one bidder receives support, an auction could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a given region, thereby ceasing the uneconomic practice of subsidizing multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. We expect that using single-winner auctions would result in less overall support than multiple-winner auctions. For example, if support were to be distributed as a fixed subsidy per geographic area, then an auction with two winners would result in twice the support of a single-winner auction. As the number of winners increases, the size of the total subsidy would increase proportionately. We tentatively conclude that this would violate the universal service principle of sufficiency and would be an unacceptable auction format. We therefore tentatively conclude that universal service support auctions should award high-cost support to a single winner.

15. If support is determined on the basis of the number of subscribers served, we similarly would expect total support under a multiple-winner auction to be higher than support under a single-winner auction for several reasons. First, many subscribers may choose to purchase service from multiple ETCs, with the result that such subscribers could indirectly be subsidized multiple times in a multiple-winner auction. Second, a multiple-

winner auction would also increase the expected size of the subsidy under most common auction formats. For example, if the size of the subsidy is determined by the lowest bid of a non-winning bidder, the per-carrier subsidy would be expected to rise as the number of winners increased. Third, when the number of winners is large relative to the number of expected bidders, tacit collusion may be facilitated, which would result in less competitive bidding for the required subsidy. Finally, as the number of carriers receiving a subsidy increases, the market share of each subsidized carrier would correspondingly decline. Since it is well established that costs to individual carriers increase as their customer density decreases, we would expect that the underlying costs on which carriers base their bids to increase as the number of winning bidders increased and the individual bidder's expected number of subscribers decreased.

16. Parties have argued that there are benefits to multiple-winner auctions. For example, CTIA argues that single-winner auctions run the risk of eliminating the consumer benefits of a competitive market by discouraging competitive entry during the period the auction winner has the exclusive right to receive support. How would a winner-gets-more auction, as proposed by CTIA, affect the overall level of support? How would the fact that all bidders receive support in a winner-gets-more auction affect the bidder strategies? To what extent should the Commission's universal service policies be directed at promoting competition in rural, high-cost markets? Does the Act require that rural consumers have affordable access to both wireline and wireless services? Would a single-winner auction deny rural consumers affordable access to both wireline and wireless services?

17. Some parties have suggested that the Commission consider having separate auctions for wireless and wireline ETCs, at least initially. For example, Verizon proposes that the Commission initiate the use of auctions in areas in which multiple wireless competitive ETCs receive support. Once these auctions have been completed, the Commission would hold a separate set of auctions in areas where there is an incumbent LEC and at least one wireline competitive ETC. We seek comment on separate wireless and wireline auctions and any other issues relating to single-versus multiple-winner auctions.

Method of Distributing the Subsidy

18. We seek comment on the manner in which a subsidy should be computed

and distributed. Specifically, subsidies could potentially be offered as a fixed payment for each geographic area, on the basis of the number of subscribers or households served, or on some combination of these methods. As noted above, a per-area subsidy with multiple winners would result in very large subsidies, and we have tentatively concluded above that this format would not be acceptable. In the case of a single-winner auction, there are advantages to each of the above possible distribution methods. A per-subscriber subsidy provides a financial incentive to serve new customers who might be otherwise unprofitable. A per-area subsidy provides certainty about the total subsidy level. This knowledge may be important to a carrier's decision about whether to make fixed investment to serve an area, and to therefore participate in the auction. The form of the subsidy may also affect the allocation of customers among multiple providers in a multiple-winner auction. If carriers do not all receive the same per-line subsidy, then a given customer may not be served by the lowest cost provider, but instead by a carrier with a higher subsidy. In addressing these issues, commenters should also address the relationship of the subsidy distribution methodology to the statute's universal service principles, including, in particular, the principles that the fund be specific, predictable, and sufficient and that consumers in rural, insular, and high-cost areas have access to services at rates that are comparable to the rates for comparable services in urban areas.

Geographic Areas

19. We seek comment on the appropriate geographic areas for reverse auctions. In most areas of the country, telecommunications services are provided by a wireline incumbent LEC and possibly by one or more competitive ETCs, most of which are wireless carriers. Basing the geographic area on any particular carrier's service area would likely give that carrier an advantage in bidding because competing carriers are unlikely to have the same service footprint.

20. Currently, support is generally based on the wireline incumbent LEC's study area. We seek comment on whether we should use the wireline incumbent LEC's study area as the geographic area on which to base reverse auctions. We note that, in some cases, the wireline incumbent LEC's study area consists of multiple disjointed geographic areas within a state. We seek comment on whether an incumbent LEC's study area that

consists of multiple non-contiguous geographic areas should be broken up at least into its contiguous parts for purposes of the auction, or be required to be auctioned as a single study area. An alternative to the wireline incumbent's study area would be to use the wire centers of the wireline incumbent LEC. What are the advantages and disadvantages of this approach? A third alternative is to use a geographic area that is independent of any carrier's service area, such as zip code, census tract, census block group, county, or metropolitan or rural statistical area (MSA, RSA). One potential advantage of such an approach is that it might better ensure that the auction is competitively and technologically neutral. What are the advantages and disadvantages of using independent geographic units that do not necessarily correspond to any wireline or wireless service area? CTIA contends that larger geographic units, such as MSAs/RSAs, would lead to problems of lack of coverage for many potential bidders. In addition, under CTIA's analysis, geographic areas which correspond to an incumbent LEC's study area (or contiguous portions thereof) might discourage participation in the auction by competitive carriers. Verizon argues that the areas should be small enough to allow the auctions to target support where it is most needed, but not so small as to create unnecessary complexity. Both CTIA and Verizon support using relatively small geographic areas, such as counties or wire centers, respectively. Although defining the relevant region as the incumbent LEC's entire study area might make it difficult for any individual competitive ETC to bid successfully, would the same hold true for incumbent LEC wire centers? Verizon claims that incumbent LEC switches generally have been located in population clusters, and that competitive ETCs similarly have tended to locate their facilities in population clusters even though they may have different network topologies than incumbent LECs. If geographic areas smaller than an incumbent LEC's entire study area are chosen, should the geographic areas nevertheless be defined so that each area is contained within the incumbent's study area, and that the total area of units up for auction completely covers the incumbent LEC's study area? We seek comment on how the size of the geographic area affects the ability of small entities to participate in auctions.

21. The size of the geographic area chosen for auction will also have an

effect on the amount of high-cost support. Specifically, a larger geographic area may include subsets of customers that are profitable (either because they live in low-cost areas or because they are likely to purchase related but unsubsidized services such as video or high speed data service). When these areas are included as part of a larger geographic area, the need for an overall subsidy is reduced on a per-customer basis. When smaller units are individually auctioned, there may be fewer profitable customers to offset losses for higher-cost customers, so a higher total subsidy may be required. We seek comment on the trade-offs that may exist between the advantages of small geographic areas in terms of economic efficiency and competitive entry and the potential costs in terms of higher support levels. We tentatively conclude that the wireline incumbent LEC's study area is the appropriate geographic area on which to base reverse auctions, and that further disaggregation is appropriate only if the total support is not increased for the resulting areas, but is capped at the award amount for the original study area. We seek comment on this tentative conclusion, as well as on how one might disaggregate a study area yet ensure the overall support amount does not increase as a result of such disaggregation.

22. We also seek comment on how we would implement different geographic areas for reverse auctions conducted in areas served by rural telephone companies. Section 214(e)(5) of the Act states: "In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company." If we decide to conduct an auction in a geographic area that is different than a rural telephone company's study area, does the Act require us to coordinate with the relevant state commission prior to conducting the auction? If so, we seek comment on issues relating to coordination with state commissions concerning the appropriate geographic areas for reverse auctions in areas served by rural telephone companies.

Universal Service Obligations

23. We seek comment on the extent to which we should define the universal service obligations of the winners of the auctions. Historically, only incumbent LECs received universal service support and had the obligation to serve

customers subject to rates and terms specified by state regulatory authorities: so-called "carrier of last resort" obligations. Under the framework adopted by Congress in the 1996 Act, although only ETCs are eligible to receive federal universal service support, there may be multiple ETCs in a given area. 47 U.S.C. 214(e)(2), 254(e). In addition, although competitive ETCs do not necessarily have carrier of last resort obligations under state law, they are required to provide the supported services throughout the service area for which the designation is received and to advertise the availability of such services and their rates using media of general distribution. 47 U.S.C. 214(e)(1). Moreover, section 214(e)(3) explicitly authorizes the states, with respect to intrastate services, and the Commission, with respect to interstate services, to order an ETC to provide service to an unserved area.

24. We seek comment on how to ensure the universal availability of services under a reverse auction mechanism. Specifically, how should the carrier of last resort obligations be defined, and on whom should they be imposed? One possibility would be for an incumbent LEC to retain both the carrier of last resort obligation and the full right to subsidy over its entire study or service area unless lower bids were submitted by rival bidders in each of the geographic units up for auction within its overall service area. If lower bids were submitted by rival bidders in all of the geographic units up for auction, then the winning bidder would inherit the carrier of last resort obligations. Related to this, the incumbent LEC could be the only provider to receive a subsidy if rival bidders do not submit bids below the reserve price in each of the geographic units up for auction within its overall service area. Alternatively, both the carrier of last resort obligation and associated subsidies could be awarded to the winning bidder in each geographic unit. The definition of the universal service obligation may be inextricably linked to the manner in which reserve prices for a geographic area are determined and to the specific auction format as discussed below. We ask parties to comment specifically on the ways in which these issues are related.

25. We seek comment on several additional issues related to the continued availability of supported services. Should the winner of an auction be allowed to transfer to another ETC at any time the universal service obligations and the related support for any portion of a geographic area acquired through an auction? Currently

the Commission has rules adopted pursuant to section 214 of the Act that address transfer of control and discontinuances. 47 U.S.C. 214; 47 CFR 63.03, 63.04, 63.71. Are these rules adequate or do they need to be modified where a carrier has both universal service obligations and subsidies? Should an existing incumbent LEC be allowed to unilaterally renounce its carrier of last resort obligations by refusing to bid in a subsequent auction? Should states or the Commission establish penalties to be imposed on an ETC that fails to fulfill its universal service obligations in a geographic area that it acquired at auction? If a carrier that has won an auction subsequently declares bankruptcy, what effect will the declaration of bankruptcy have on its universal service obligations and the subsidy that it receives? Do we need to adopt new rules to address this issue?

26. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act. *Federal-State Joint Board on Universal Service*, 70 FR 29960, May 25, 2005 (*ETC Designation Order*). Section 214(e)(6) of the Act directs the Commission to designate carriers when those carriers are not subject to the jurisdiction of a state commission. 47 U.S.C. 214(e)(6). Specifically, the Commission requires that an ETC applicant demonstrate: (1) A commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. We seek comment on whether these same requirements and/or any additional requirements should apply to all ETCs winning universal service auctions. Should these requirements apply only to auction winners, or should some or all of the requirements apply to all ETCs participating in universal service auctions? As noted, these requirements currently apply to ETCs designated by the Commission. Should they apply to state-designated ETCs as well?

27. In the *ETC Designation Order*, the Commission also encouraged states to adopt the Commission's requirements for ETC designation, but declined to

mandate that state commissions do so. We seek comment on the extent to which states have done so. Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity. Because the *ETC Designation Order* guidelines are not binding upon the states, the Commission rejected arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations. The Commission also found that federal guidelines are consistent with the holding of the United States Court of Appeals for the Fifth Circuit that section 214(e) of the Act does not prohibit the states from imposing their own eligibility requirements in addition to those described in section 214(e)(1). *Texas Office of Public Utility Counsel v. FCC*, 183 F. 3d 393 (5th Cir. 1999). We seek comment on whether the Commission should condition an auction winner's receipt of federal high-cost support on compliance with additional requirements to ensure that the auction winner has obligations analogous to carrier of last resort obligations. We discuss the Commission's specific ETC requirements and related issues in more detail below.

28. *Commitment and Ability to Provide the Supported Services*. The Commission requires that ETCs must provide service to all customers who make a reasonable request for service. Specifically, when a request comes from a potential customer located within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) Modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. The Commission encouraged states to follow the Joint Board's proposal that any build-out commitments adopted by states be harmonized with any existing policies regarding line extensions and carrier of last resort obligations. We seek comment on what build-out commitments should apply to ETCs

participating in and/or winning universal service auctions.

29. The Commission also requires that a competitive ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to its network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) How signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. We seek comment on whether we should require all ETCs participating in and/or winning universal service auctions to submit similarly detailed five-year plans. If the auction winner's obligation to serve the area is longer or shorter than five years, we tentatively conclude that it would be appropriate to adjust the time period for the plan to coincide with the time period of the obligation. If commenters believe that the requirement to submit five-year build-out plans, or the specific contents of the build-out plans, should be modified, they should explain how.

30. *Local Usage*. The Commission currently requires an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation, but the Commission declined to adopt a specific local usage threshold in the *ETC Designation Order*. Should we adopt a specific local usage threshold for winners of auctions? Currently, we do not regulate the retail rates of ETCs as a condition of their receiving high-cost support. States generally regulate wireline residential rates for incumbent LECs, but are precluded from regulating wireless rates by section 332(c)(3) of the Act. Wireline rates typically are set on a flat rate basis, whereas rates for wireless service generally are set on the basis of "buckets of minutes." What kind of restrictions on retail pricing, if any, should the Commission place on auction participants in order to ensure rough comparability of pricing plans? For example, if a carrier whose rates are not regulated wins an auction, should it be

required to freeze its retail rates, or agree to increase them subject to a price cap plan already in place within the state? Should the Commission establish a maximum rate for the local usage plan offered by auction bidders or winners?

31. *Equal Access.* Although the Commission does not impose a general equal access requirement on ETC applicants, we require ETC applicants to acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area. The Commission found that, if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement on a case-by-case basis. We seek comment on whether we should require all ETCs participating in universal service auctions to acknowledge that they may be required to provide equal access in the event that they win the auction.

32. *Ability to Remain Functional in Emergency Situations.* The Commission also requires an ETC applicant to demonstrate its ability to remain functional in emergency situations by demonstrating that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. In addition, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations. We seek comment on whether we should require all ETCs participating in and/or winning universal service auctions to demonstrate their ability to remain functional in emergencies.

33. *Consumer Protection.* The Commission requires a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application to the Commission. A commitment to comply with CTIA's Consumer Code for Wireless Service currently satisfies this requirement for a wireless ETC applicant seeking designation before the Commission. We seek comment on whether we should require all wireless ETCs participating in and/or winning universal service auctions to comply with CTIA's Consumer Code for Wireless Service. Are there other consumer protection and service quality standards that should apply to auction participants and/or winners? We seek comment on what type of consumer protection and service quality standards should apply

to wireline auction participants and/or winners, including incumbent LECs.

34. *Adequate Financial Resources.* In the *ETC Designation Order*, the Commission declined to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area. The Commission found that compliance with the requirements adopted in that order would require an ETC applicant to show that it has significant financial resources. After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service. We seek comment on whether we should adopt additional requirements for ETCs participating in universal service auctions to demonstrate that they have the financial resources and ability to provide quality services throughout the geographic area to be auctioned.

35. *Additional Obligations/Provision of Broadband Internet Access Services.* In addition to the ETC requirements adopted in the *ETC Designation Order*, we seek comment on whether we should adopt additional obligations in the context of reverse auctions. We ask parties to comment on the specific additional universal service obligations they believe to be appropriate, and how they should be defined. We tentatively conclude that the Commission should require an auction winner to offer broadband Internet access services with information transfer rates greater than or equal to 768 kbps in at least one direction throughout the entire geographic area for which it wins the auction. In addition, we tentatively conclude that the Commission should require an auction winner to offer broadband Internet access services with information transfer rates greater than or equal to 1.5 mbps in at least one direction throughout the entire geographic area halfway through the term of the obligations. We reach these tentative conclusions because "[t]he Commission has consistently recognized the critical importance of broadband services to the nation's present and future prosperity and is committed to adopting policies to promote the development of broadband services, including broadband Internet access services." *Development of Nationwide Broadband Data To Evaluate Reasonable And Timely Deployment of Advanced Services To All Americans, Improvement of Wireless Broadband Subscribership Data, And Development*

of Data on Interconnected Voice Over Internet Protocol Subscribership, 72 FR 27519, May 16, 2007. We seek comment on these tentative conclusions. Further, we tentatively conclude that an auction winner's broadband Internet access services should be offered at a reasonable price. We seek comment on how we should ensure that broadband Internet access services are being offered at reasonable prices.

Reserve Prices

36. Because there may be few bidders in certain geographic areas, it is important to establish a reserve "price"—i.e. a maximum subsidy level that participants in the auction would be allowed to place as a bid. We seek comment on how we should set the reserve prices for the areas to be auctioned. We expect that the reserve prices will play a critical role in the auctions. A reserve price that is set too low is likely to discourage bidders from participating in the auction, while one that is set too high raises the possibility that too much support will be allocated.

37. At least initially, reserve prices could be based on the current levels of high-cost support. We seek comment on how reserve prices based on current support should be determined if the geographic area to be auctioned differs from the area for which support is currently calculated. For example, if the geographic areas for the auctions are wire centers, for non-rural study areas it would be fairly straightforward to set wire center reserve prices based on the forward-looking costs estimated by the Commission's cost model.

38. Because the non-rural mechanism targets support to wire centers based on relative cost, the highest cost wire centers would have the highest per-line reserve price. For rural study areas with multiple wire centers, however, embedded costs for incumbent LECs are typically available only at the study area level. If a reserve price were based on the average cost per line in the study area, or if a fixed reserve subsidy for a study area were allocated on a per-line basis, the reserve price would not accurately reflect the costs of the individual wire centers or other geographic units within the study area. As noted above, this would discourage participation in the auction by competitive ETCs in the higher cost areas. In addition, encouraging competitive ETCs to bid for the lower cost areas could potentially provide insufficient support for an incumbent LEC with the obligation to serve the remaining higher cost areas. One alternative would be to determine a reserve price at the wire center level by

allocating the study area embedded cost on the basis of relative forward-looking costs as determined at the wire center level by the Commission's cost model. Another alternative would be to set reserve prices for rural study areas on the basis of a formula in which either forward-looking, model-generated cost or embedded cost data are used to estimate costs on the basis of observable factors such as customer density. For example, if a forward-looking approach is used to set a reserve price for non-rural geographic areas, one could use the data generated by the forward-looking cost model to regress model costs by wire center on wire center customer density. The result would be a simple analytic formula that could be used in place of the model to set reserve prices for geographic units in rural study areas. We seek comment on these and other alternatives.

39. We tentatively conclude that, if the reserve price is based on the current levels of high-cost support and the area to be auctioned is smaller than the incumbent LEC's study area, the reserve price should be based on disaggregated support amounts. We also tentatively conclude that, if reserve prices are based on disaggregated support amounts, reserve prices in the aggregate should be capped at the current study area support amount. We seek comment on these tentative conclusions.

40. After the initial auction, the winning bids in the most recent prior auctions could be used to establish a reserve price in the next auction. If the geographic areas subject to auction are smaller than an incumbent LEC's service area, then the reserve price could be determined for each geographic unit for both rural and non-rural study areas as described above, but using the previous auction's winning bid rather than the incumbent LEC's forward-looking or embedded cost. Use of prior auction data would result in reserve prices that are responsive to changing technologies, and would lessen the need to rely on forward-looking cost models after the initial auction. On the other hand, use of prior auction results might introduce new strategic considerations into any given auction, since participants would be aware that their bid might affect future reserve prices. We seek comment on these issues.

Auction Design

41. The Commission has conducted public auctions for electromagnetic spectrum rights since 1994. In a spectrum auction, a winning bidder obtains a license to use spectrum in a well defined geographic area. The value

of winning a particular area, however, can be closely related to the value of winning in adjacent areas. Individual bidders may have unique business models, so that the value of winning a particular area will generally differ among the bidders. At the same time, there can be a common value component if competing bidders have similar business models, even though each bidder has unique information about demands, costs or other relevant aspects of the business model. In its spectrum auctions, the Commission has used an auction design known as the simultaneous multiple round (SMR) auction to address these issues. The SMR auction is a form of ascending price auction in which bidders are allowed to place bids for any number of single licenses in a series of discrete, successive rounds, with the length of each round announced in advance by the Commission. After each round closes, round results are processed and made public. At that time, bidders learn about the bids placed by other bidders, obtaining information about the value of the licenses to all bidders. This increases the likelihood that the licenses will be assigned to the bidders who value them the most. In an SMR auction, there is no preset number of rounds. Bidding continues until a round occurs in which no new bids are submitted.

42. Recently, variations on the SMR design have been proposed in which bidders are allowed to bid on packages of licenses. With package or "combinatorial" bidding, bidders may place bids on groups of licenses as well as on individual licenses. This approach allows bidders to better express the value of any synergies (benefits from combining complementary items) that may exist among licenses and to avoid the risk of winning only part of a desired set. Package bidding can be important to bidders who anticipate significant economies of scale and scope in deploying new infrastructure, or who expect customer demand to depend on total network coverage.

43. The auction design for a reverse auction to determine high-cost universal service support should make use of the Commission's experience with spectrum auctions as much as possible. As a general matter, we invite parties to comment on the similarities and differences between auctions for spectrum and reverse auctions for subsidies for high-cost support.

44. Whether or not the SMR design is considered as a basis for a reverse auction for high-cost support, there are a number of specific issues that must be resolved. To what extent should

package bidding be allowed?

Unrestricted combinatorial bidding would allow bidders to place a bid for any package of geographic areas in the auction. If small geographic areas are chosen as units for auction, package bidding may be essential for bidders to make appropriate bids based on their perceived cost and demand complementarities among geographic regions. On the other hand, an unrestricted combinatorial bidding procedure with a large number of distinct geographic areas could prove to be confusing to bidders and potentially computationally intractable. Should individual auctions with combinatorial bidding be held at a regional or state specific level instead of on a national basis? A broader scope for the auction would allow bidders to better capture interrelationships between geographic areas. However, a larger scope would also significantly increase the complexity of the auction, whether or not package bidding is allowed.

45. If a multiple round auction is considered, another important issue is the information that is revealed to bidders between rounds. A multiple round auction can lead to efficient outcomes in auctions with a common value component, since the highest bid at any round is necessarily revealed to all bidders. However, if additional information, such as the identity of the current winning bidder for each item is also revealed, strategic behavior may be facilitated. We seek comment on the potential dangers of anti-competitive strategic behavior in an auction for high-cost support, and the potential effects on economic efficiency.

46. If parties do not believe that an SMR auction design should be used for high-cost support, they should propose and discuss in detail the specific auction design that they believe to be superior. For example, would a single round "sealed bid" format be acceptable? If so, should the winning bidder receive a subsidy based on its own bid for the necessary subsidy or on the bid of the next higher bidder? Under the latter alternative, known as a "second price auction," it is well known that bidders have an incentive to place a bid based on the minimum subsidy they would be willing to accept (since the subsidy they receive does not depend on their actual bid). How are these auction designs affected if the number of bidders is small? Parties are also invited to comment on the specific auction designs used in other countries in which reverse auctions have been used for universal service support.

Frequency of Auctions

47. We seek comment on the appropriate length of time between auctions. Currently, each applicant seeking ETC designation by the Commission must submit a five-year plan describing with specificity its proposed improvements or upgrades to its network on a wire center-by-wire center basis throughout its designated service area. Would five years be an appropriate length of time between auctions, or should auctions be more or less frequent?

48. Auctions for universal service support are closely related to franchise bidding schemes for natural monopoly, which have been extensively studied in economics literature. Bidders in any particular auction require some degree of certainty about future revenues, including subsidies, in order to make informed investment decisions. Williamson discusses some of the less obvious advantages of long-term contracting, which, in the reverse auction context, would call for relatively infrequent auctions. On the other hand, new technologies may periodically evolve that would allow lower cost provision of telecommunications services in high-cost areas. In addition, more frequent auctions can allow for more informed bidding decisions, since each bidder would be more able to predict levels of demand and potential competition in the immediate future than in the longer term.

49. To the extent that support levels provided to a winning bidder become an essential source of revenue for the winning bidder, the question of asset transfers must be considered in cases in which a new winning bidder replaces a previously supported carrier. For example, it might be efficient for a cellular carrier that wins an auction to acquire towers and fiber links from a previously supported carrier serving the same region. If asset transfers are determined only through bilateral bargaining between the relevant parties, incumbent LECs might have a significant advantage due to their sunk costs. As a result, there may be fewer bidders in subsequent auctions than would otherwise be desirable. Should there be any oversight or other restrictions on the transfer of assets when a new winning bidder replaces the previous auction winner? We ask parties to comment on this analysis and its importance in assessing the long-term viability of reverse auctions for universal service support.

Broadband Reverse Auction Pilot Program

50. Finally, in light of the complexities in establishing a reverse auction, we seek comment on whether we should employ a pilot program to test the use of reverse auctions as a method for distributing high-cost support. Specifically, we seek comment on whether we should adopt a pilot program to replace the current high-cost support received in a particular area. We tentatively conclude that, in any pilot program, the reserve price should be based on the current level of support in the particular area. We also tentatively conclude that the States are best situated to implement any pilot program. We seek comment on how such a pilot program should be implemented.

51. We also seek comment on whether a pilot program should be used to disburse high-cost support targeted to broadband Internet access services. We note that Alltel has filed a broadband auction proposal, and we seek comment on that proposal. Similarly, AT&T has proposed its own broadband pilot program. We seek comment on AT&T's broadband pilot program, and whether it would be possible to use a reverse auction approach under that proposal.

Procedural Matters

52. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 3, 2008, and reply comments are due on or before May 5, 2008. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

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

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by

Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

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

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

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

Ex Parte Requirements

53. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200-1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and

written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

54. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA, which is set forth below. Comments must be identified as responses to the IRFA and must be filed on or before April 3, 2008. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

55. In the Telecommunications Act of 1996 (1996 Act), Congress sought to preserve and advance universal service while, at the same time, opening all telecommunications markets to competition. Telecommunications Act of 1996, Public Law 104-104 (1996). Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish. Section 254(e) provides that only eligible telecommunications carriers (ETCs) designated under section 214(e) shall be eligible to receive federal universal service support, and any such support should be explicit and sufficient to achieve the purposes of that section.

56. In the *Universal Service First Report and Order*, the Commission recognized certain advantages of using competitive bidding to determine high-cost universal service support, specifically, "its potential as a market-based approach to determining universal service support, if any, for any given area," and "its ability to reduce the amount of support needed for universal service." 62 FR 32682, June 17, 1997. The record at the time, however, was insufficient to support adoption of a competitive bidding mechanism. Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because of the expectation that there would be no competition in a significant number of rural, insular, or high-cost areas in the near future. Nonetheless, the Commission found that

competitive bidding warranted further consideration.

57. More recently, there has been renewed interest in using competitive bidding to determine high-cost universal service support. In August 2006, the Joint Board sought comment on the merits of using auctions to determine high-cost universal service support. *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, 71 FR 50420, August 25, 2006. The Joint Board also sought comment on auctions in the ETC/Portability proceeding. *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, 68 FR 10429, March 5, 2003. In February 2007, the Joint Board held an *en banc* hearing to discuss high-cost universal service support in rural areas, including the use of reverse auctions to determine support. *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, 22 FCC Rcd 2545 (2007). The Joint Board received three specific auction proposals in response to the *2006 Joint Board Public Notice* and the *en banc* hearing. In a public notice, released May 1, 2007, the Joint Board sought comment on these proposals and invited commenters to file additional auction proposals. *Federal-State Joint Board on Universal Service Seeks Comment on Long Term Comprehensive High-Cost Universal Service Reform*, 22 FCC Rcd 9023 (2007). The Joint Board also recommended that, as an interim measure, the Commission adopt a cap on competitive ETC support. *Recommended Decision*, 22 FCC Rcd 8998 (2007).

58. In this NPRM, the Commission seeks comment on the merits of using reverse auctions (a form of competitive bidding) to determine the amount of high-cost universal service support provided to ETCs serving rural, insular, and high-cost areas. In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area. The Commission tentatively concludes that reverse auctions offer several potential advantages over current high-cost support distribution mechanisms, and that the Commission should develop an auction mechanism to determine high-cost universal service support. The objective of the NPRM is to seek comment on this tentative conclusion and on a number of specific issues regarding auctions and auction design that must be resolved in order for

the Commission to implement an auction mechanism.

Legal Basis

59. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 4(j), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) through (j), 201 through 205, 214, 254, 403 and §§ 1.1, 1.411 through 1.419, and 1.1200 through 1.1216, of the Commission's rules, 47 CFR 1.1, 1.411 through 1.419, 1.1200 through 1.1216.

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

60. 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 rules, if adopted. 5 U.S.C. 604(a)(3). The RFA generally defines the term "small entity," 5 U.S.C. 601(6), as having the same meaning as the terms "small business," 5 U.S.C. 601(3), "small organization," 5 U.S.C. 601(4), and "small governmental jurisdiction." 5 U.S.C. 601(3). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3). Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations.

61. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, is the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. 13 CFR 121.201.

Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

Wireline Carriers and Service Providers

62. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

63. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent LECs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

64. *Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201. According to Commission data, 859 carriers reported that they were engaged in the provision of either competitive LEC or CAP services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees, and 118 have more than

1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that most competitive LECs, CAPs, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

Wireless Carriers and Service Providers

65. *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." 13 CFR 121.201. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

66. *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. 13 CFR 121.201. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 221 of these are small under the SBA small business size standard.

Satellite Service Providers

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

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

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

69. In the NPRM, the Commission tentatively concludes that, under a reverse auction mechanism, bidders must hold an ETC designation covering the relevant geographic area prior to participating in an auction to determine high-cost support for that geographic area. In the *ETC Designation Order*, the Commission required ETCs designated by the Commission to submit annually certain information regarding their networks and their use of universal service funds. Specifically, every ETC designated by the Commission must submit the following information on an annual basis:

(1) Progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) The date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

(6) Certification that the ETC is able to function in emergency situations;

(7) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

In the NPRM, the Commission sought comment on whether the Commission's ETC designation requirements should apply to all ETCs participating in and/or winning universal service auctions.

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

70. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and 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 part thereof, for small entities. 5 U.S.C. 603(c).

71. This IRFA seeks comment on how reverse auctions could be implemented in a manner that reduces the potential burden and cost of participation by small entities in the auctions. We also seek comment on the potential impact the use of reverse auctions to distribute high-cost universal service support would have on small entities. In the NPRM, the Commission offers several alternatives that might minimize significant economic impact on ETCs, some of which might be small entities. For example, the Commission discusses proposals to use relatively small geographic areas as the areas to be auctioned, and specifically seeks comment on how the size of the geographic area affects the ability of small entities to participate in auctions. The Commission also seeks comment on various methods of setting reserve prices based on current levels of high-cost support, and tentatively concludes that the reserve price should be set at disaggregated support amounts if the area to be auctioned is smaller than the incumbent LEC's study area.

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

72. None.

Ordering Clauses

73. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201–205, 214, 254, 403 and §§ 1.1, 1.411–1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.411–1.419, 1.1200–1.1216, this Notice of Proposed Rulemaking is adopted.

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–4146 Filed 3–3–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1537 and 1552

[Docket ID No. EPA–HQ–OARM–2007–1115; FRL–8536–8]

RIN 2030–AA96

Acquisition Regulation: Guidance on Technical Direction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to revise the prescription for and the content of a clause that addresses issuing technical direction in contracts. This revision incorporates and supersedes several class deviations to the EPAAR and updates terminology and procedures related to issuing technical direction.

DATES: Comments must be received on or before April 3, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2007–1115, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* doCKET.oei@epa.gov.
- *Fax:* (202) 566–0224.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three (3) copies

• *Hand Delivery:* EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2007–1115. EPA's policy is that all timely comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other