providers (as defined in § 9.3 of this chapter), shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they provide service.

(b) Respondents identified in paragraph (a) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477).

(c) Respondents may make requests for Commission non-disclosure of provider-specific data contained in the Form 477 under § 0.459 of this chapter by so indicating on the Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Wireline Competition Bureau may release provider-specific information to a state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information.

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[FR Doc. E8–14873 Filed 7–1–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36 and 54

[WC Docket No. 05–337; CC Docket No. 96–45; FCC 08–122]

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

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In this Order, the Commission takes action to rein in the explosive growth in high-cost universal service support disbursements. As recommended by the Federal-State Joint Board on Universal Service, the Commission adopts an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. Specifically, as of the effective date of this Order, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. The Commission also adopts two limited exceptions from the specific application of the interim cap. The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform. In addition, the Commission resolves most of the petitions for ETC designation currently pending before the Commission.

DATES: This Order will be effective August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Telecommunications Access Policy Division, Wireline Competition Bureau, 202–418–7389 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in WC Docket No. 05–337 and CC Docket No. 96–45, adopted on April 29, 2008, and released on May 1, 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.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Final Paperwork Reduction Act of 1995 Analysis: This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995). It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' Small Business Paperwork Relief Act of 2002, Public Law 107–198, 116 Stat. 729 (2002); 44 U.S.C. 3506(c)(4).

In this present document, we have assessed the effects of demonstrating compliance with the exception to the interim cap, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. First, we note that compliance with the exception is voluntary—small business concerns are not required to comply with the information collection. In addition, compliance with the exception will be elected by carriers on a study area by study area basis. Carriers need only provide additional information on the study areas for which they elect to rely on the exception to the interim cap.

Synopsis of the Order

Introduction

1. In this Order, we take action to rein in the explosive growth in high-cost universal service support disbursements. As recommended by the Federal-State Joint Board on Universal Service (Joint Board), we adopt an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, 22 FCC Rcd 8998 (Fed.-State Jt. Bd. 2007) (*Recommended Decision*). Specifically, as of the effective date of this Order, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. We also adopt two limited exceptions from the specific application of the interim cap. First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier (LEC). Second, we adopt a limited exception for competitive ETCs serving tribal lands or Alaska Native regions. The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform. The Commission plans to move forward on adopting comprehensive reform measures in an expeditious manner. The Commission commits to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the pending Commission Notices regarding comprehensive reform. Finally, we resolve most of the petitions for ETC designation currently pending before the Commission.

Background

2. For the past several years, the Joint Board has been exploring recommending modifications to the

Commission's high-cost universal service support rules. In 2002, the Commission asked the Joint Board to review certain of the Commission's rules related to the high-cost universal service support mechanisms. *See Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Order, 67 FR 70703 (2002). Among other things, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC provides service. In response, the Joint Board made a number of recommendations concerning the designation of ETCs in high-cost areas, but declined to recommend that the Commission modify the basis of support (i.e., the methodology used to calculate support) in study areas with multiple ETCs. Instead, the Joint Board recommended that it and the Commission continue to consider possible modifications to the basis of support for competitive ETCs as part of an overall review of the high-cost support mechanisms for rural and non-rural carriers.

3. In 2004, the Commission asked the Joint Board to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order. See Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Order, 69 FR 48232, para. 1 (2004) (*Rural Referral Order*); *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96–45, and Report and Order in CC Docket No. 00–256, 66 FR 30080 (2001) (*Rural Task Force Order*); *see also Federal-State Joint Board on Universal Service; High-Cost Universal Service Support,* CC Docket No. 96–45, WC Docket No. 05–337, Order, 71 FR 30298 (2006) (extending the *Rural Task Force Order* plan). In August 2004, the Joint Board sought comment on issues the Commission referred to it related to the high-cost universal service support mechanisms for rural carriers. *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support,* CC Docket No. 96–45, Public Notice, 69 FR 53917 (Fed.-State Jt. Bd. 2004). The Joint Board also specifically sought comment on the methodology for calculating support for ETCs in competitive study areas. Since that time, the Joint Board has sought comment on a variety of specific proposals for addressing the issues of universal service support for rural carriers and the basis of support for competitive ETCs, including proposals developed by members and staff of the Joint Board, as well as the use of reverse auctions (competitive bidding) to determine high-cost universal service funding to ETCs. *See Federal State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support,* CC Docket No. 96–45, Public Notice, 20 FCC Rcd 14267 (Fed.-State Jt. Bd. 2005); *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support,* WC Docket No. 05–337, CC Docket No. 96–45, Public Notice, 21 FCC Rcd 9292 (Fed.-State Jt. Bd. 2006).

4. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support for competitive ETCs while the Joint Board considered proposals for comprehensive reform. *See Recommended Decision,* 22 FCC Rcd at 8999–9001, paras. 4–7. Specifically, the Joint Board recommended that the Commission cap competitive ETC support at the amount of support received by competitive ETCs in 2006. The Joint Board recommended that the cap on competitive ETC support be applied at the state level. Finally, the Joint Board recommended that the interim cap apply until one year from the date that the Joint Board makes its recommendation regarding high-cost universal service reform. On May 14, 2007, the Commission released a Notice of Proposed Rulemaking, seeking comment on the Joint Board's recommendation. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 72 FR 28936 (2007) (*Notice*). On November 19, 2007, the Joint Board submitted to the Commission recommendations for comprehensive reform of high-cost universal service support. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Recommended Decision, 22 FCC Rcd 20477 (2007) (*Comprehensive Reform Recommended Decision*). On January 29, 2008, the Commission released three notices of proposed rulemaking addressing proposals for comprehensive reform of the high-cost universal service support program. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 73 FR 11580 (2008) (*Identical Support Rule NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 73 FR 11591 (2008) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 73 FR 11587 (2008) (*Joint Board Comprehensive Reform NPRM*) (collectively *Reform Notices*). Comments on the *Reform Notices* were due by April 17, 2008 and reply comments were due by May 19, 2008. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* CC Docket No. 96–45; WC Docket No. 05–337, Order, DA 08–674 (rel. Mar. 24, 2008) (extending comment and reply comment dates); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* CC Docket No. 96–45; WC Docket No. 05–337, Order, DA 08–1168 (rel. May 15, 2008) (extending reply comment date).

Discussion

5. We adopt, with limited modifications, the Joint Board's recommendation for an emergency, interim cap on high-cost support for competitive ETCs. This action is necessary to halt the rapid growth of high-cost support that threatens the sustainability of the universal service fund. As described below, annual support for competitive ETCs in each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008, on an annualized basis. As further discussed below, we also create a limited exception to the cap to allow competitive ETCs that serve tribal lands or Alaska Native regions to continue to receive support at uncapped levels.

Need for a Cap on Competitive ETC Support

A Cap on Competitive ETC Support Is Required To Preserve the Sustainability and Sufficiency of Universal Service

6. We agree with the Joint Board's assessment that the rapid growth in high-cost support places the federal universal service fund in dire jeopardy. In 2007, the universal service fund

provided approximately $4.3 billion per year in high-cost support. In contrast, in 2001, high-cost universal service support totaled approximately $2. 6 billion. In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat since 2003, competitive ETC support, in the seven years from 2001 through 2007, has grown from under $17 million to $1. 18 billion—an average annual growth rate of over 100 percent. We find that the continued growth of the fund at this rate is not sustainable and would require excessive (and ever growing) contributions from consumers to pay for this fund growth.

7. We conclude that immediate action must be taken to stem the dramatic growth in high-cost support. Therefore, as recommended by the Joint Board, we immediately impose an interim cap on high-cost support provided to competitive ETCs until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years. The interim cap that we adopt herein limits the annual amount of high-cost support that competitive ETCs can receive in the interim period for each state to the amount competitive ETCs were eligible to receive in that state during March 2008, on an annualized basis.

8. We find that adopting an interim cap is consistent with the requirement of section 254 of the Communications Act of 1934, as amended (the Act), that support be ''sufficient'' to meet the Act's universal service purposes. Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (the Act). The Commission previously has concluded that the statutory principle of ''sufficiency'' proscribes support in excess of that necessary to achieve the Act's universal service goals. *MAG Plan Order*, 66 FR 59719, paras. 131–32; *Rural Task Force Order*, 66 FR 30080, para. 27; *Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 68 FR 69627, paras. 36–37 (2003), *remanded, Qwest Corp.* v. *FCC*, 398 F.3d 1222 (10th Cir. 2005); 47 U.S.C. 254(b). Notably, the Commission has previously adopted cost controls, including adopting an indexed cap on the high-cost loop support mechanism, which the U.S. Court of Appeals for the Fifth Circuit held to be consistent with the Act's universal service mandate. *Alenco Communications, Inc.* v. *FCC*, 201 F.3d 608, 620–21 (5th Cir. 2000) (''[t]he agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service'').

9. Similarly, our action today applies interim cost controls to the aspect that most directly threatens the specificity, predictability, and sustainability of the fund: the rapid growth of competitive ETC support. *See* 47 U.S.C. 254(b)(5). A primary consequence of the existing competitive ETC support rules has been to promote the sale of multiple supported wireless handsets in given households. *See Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05–333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5218, para. 17 (2007) (stating that a majority of presubscribed interexchange customers also subscribe to mobile wireless service); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 07–71, Twelfth Report, 23 FCC Rcd 2241, at para. 246 (2008) (citing survey reporting that only approximately 11. 8 percent of U.S. households relied exclusively on wireless phones in 2006) (*2007 Commercial Mobile Services Report*). We do not today make a final determination regarding the level of support to competitive ETCs that is sufficient, but not excessive, for achieving the Act's universal service goals because we expect to take further action to enact fundamental reform. *See Alenco*, 201 F.3d at 619 (''excessive funding may itself violate the sufficiency requirements of the Act''). Instead, today we take the reasonable, interim step of capping annual competitive ETC support for each state at the amount competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. Doing so will provide a necessary constraint on the growth of support until comprehensive reform is adopted.

10. We do not find it necessary to adopt additional caps on support provided to incumbent LECs at this time because, as the Joint Board noted in its *Recommended Decision*, high-cost support to incumbent LECs has been flat and is therefore exerting less pressure on the universal service fund. *Recommended Decision*, 22 FCC Rcd at 9001, para. 5. Moreover, incumbent LEC high-cost loop support is already capped, and incumbent LEC interstate access support is subject to a targeted limit. *See* 47 CFR 36.603, 54.801(a). Incumbent LEC disbursements from other support mechanisms, like local switching support and interstate common line support, have been stable in recent years. Further, although high-cost model support has no actual cap, it does have built-in restraints on growth, which derive from the fact that support is based on stable statewide average estimated costs. Accordingly, we limit the interim cap we adopt today to high-cost support provided to competitive ETCs.

11. Some parties argue that inefficiencies in high-cost support for incumbent LECs are the root cause of the high-cost support growth, and that the Commission must address these inefficiencies to stabilize the fund. Although addressing inefficiencies in incumbent LEC support may be necessary for comprehensive reform, we disagree that such review of incumbent LEC support is necessary immediately to rein in the growth of high-cost support for an interim period. First, as we have noted, total incumbent LEC support has not grown in recent years and does not have the same potential for rapid explosive growth competitive ETC support does. Second, although increases in incumbent LEC high-cost support may contribute indirectly to growth in high-cost support for competitive ETCs, the interim cap on competitive ETC support we adopt today will eliminate that growth potential. To the extent that there may be inefficiencies in incumbent LEC high-cost support, we anticipate addressing those in the context of comprehensive universal service reform.

An Interim Cap on Competitive ETC Support Is Consistent With the Act

12. We disagree with arguments that capping support for competitive ETCs violates the Act. As a general matter, the Commission's discretion to establish caps on high-cost support has been upheld. *See Alenco*, 201 F.3d at 620. Moreover, as we discuss further below, we find no merit in the arguments raised by commenters in this proceeding that this particular cap violates the Act.

13. We disagree with comments that this cap violates the Act's statutory principles. CTIA argues that the cap would violate the Act's requirements that rates in rural areas should be reasonably comparable to those in urban areas. CTIA, however, fails to provide

any data demonstrating that, or analysis explaining why the cap would result in rural rates that are not comparable with those in urban areas. Instead, it merely asserts that ''[t]he proposed cap will deny customers access to reasonably equivalent rates, and to reasonably equivalent services.'' There simply is no support in the record for this contention. To the contrary, many wireless carriers that do not receive high-cost support compete against wireless competitive ETCs that do receive support, and many wireless competitive ETCs served high-cost territories before they were designated as eligible to receive support.

14. CTIA, along with Dobson, also contends that the cap violates the universal service principle of sufficiency. Neither commenter, however, provides any support for its contentions. To the contrary, as we explain above, we believe that the statutory principle of sufficiency is not inconsistent with the interim ''cost controls'' we adopt herein. We find that the interim cap we adopt is consistent with the principle of sufficiency as defined by the court in *Alenco* because it seeks to eliminate support in excess of that necessary to ensure the Act's universal service goals. *See Alenco*, 201 F.3d at 619. Further, because competitive ETC support is based on the incumbent LEC's costs, rather than on the competitive ETC's own costs, there is no reason to believe—and no record data showing—that support subject to an interim cap would necessarily result in insufficient support levels. Dobson also argues that the cap will violate the universal service principle of predictability because the effects of the cap ''will be driven by factors that are not at all 'predictable'.'' Adoption of the interim cap, however, makes competitive ETC support more predictable, in that it sets an upper, definitive bound on the amount of support available in a state. Moreover, Dobson ignores the fact that, as the court concluded in *Alenco*, the Act's requirement of predictability requires only that the rules governing distribution, not the resulting funding amounts, must be predictable. *Alenco*, 201 F.3d at 623.

15. We are not persuaded by CTIA's argument, citing *Alenco*, that the Act requires the promotion of competition in high-cost areas through the provision of equal per-line support amounts to all carriers. Rather than requiring the use of universal service support to subsidize competition, the court in *Alenco* was concerned with the sustainability of universal service in a competitive environment. Specifically, the court found that ''[t]he Commission therefore is responsible for making the changes necessary to its universal service program to ensure that it survives in the new world of competition.'' *Alenco*, 201 F.3d at 615 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Report and Order, 62 FR 32861, paras. 1–4, 20 (1997) (*Universal Service First Report and Order*) (stating that the Commission, through its work with the Joint Board, ''ensure[s] that this system is sustainable in a competitive marketplace, thus ensuring that universal service is available at rates that are 'just, unreasonable [sic], and affordable' for all Americans'')). The court stated that the Commission ''must see to it that *both* universal service and competition are realized; one cannot be sacrificed in favor of the other.'' *See Alenco*, 201 F.3d at 615. We therefore find that our action today is not only consistent with, but is supported by, the court's holding in *Alenco*.

16. Similarly, we are not persuaded by Alltel's argument that competitive ETCs and incumbent LECs must receive the same amount of support on a per-line basis. Although Alltel correctly notes that, in upholding the cap on high-cost loop support, the court in *Alenco* ''rejected the premise that [incumbent LEC] revenue flows must be protected at all costs, and thus that any reductions in disbursements needed to prevent undue fund growth must be borne by [competitive ETCs] rather than [incumbent LECs],'' Alltel fails to explain why the court's holding requires equal per-line support for all competitors. Put simply, while the court rejected the idea that any reductions in disbursements necessary to curtail fund growth had to be borne by competitive ETCs and not incumbent LECs, the court did not prohibit the Commission from imposing reductions or limits on competitive ETC disbursements.

17. CTIA argues that adoption of the interim cap would not comport with the court's statement in *Alenco* that ''the program must treat all market participants equally * * * so that the market, and not local or federal government regulators, determines who shall compete for and deliver service to customers.'' The cited language, however, does not require the Commission to continue to provide identical levels of support to all carriers. It merely requires that all ETCs must be eligible to receive support, an unremarkable conclusion given the plain text of the statute.

18. Alltel and CTIA both ignore key aspects of *Alenco*, in which the court expressly found that the Commission must ensure that all *customers* be able to receive affordable basic telecommunications services.

> Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well. Moreover, excessive funding may itself violate the sufficiency requirements of the Act.

Alenco, 201 F.3d at 620. Nowhere in the court's decision did it require that all *providers* must receive equal per-line support amounts.

19. In arguing that the interim cap would not comport with the identical support rule because it would disburse unequal support per line, Alltel also cites various Commission precedents related to the establishment and implementation of the identical support rule, which, at the time, the Commission found to be consistent with its principle of competitive neutrality. In justifying this portability requirement, both the Joint Board and Commission made clear that they envisioned that competitive ETCs would compete directly against incumbent LECs and try to take existing customers from them. *See Universal Service First Report and Order*, 62 FR 32861, paras. 287, 311; *Federal-State Joint Board on Universal Service*, Recommended Decision, 61 FR 63778, para. 296 (Fed-State Jt. Bd. 1996). The predictions of the Joint Board and the Commission have proven inaccurate, however.

20. First, they did not foresee that competitive ETCs might offer supported services that were not viewed by consumers as substitutes for the incumbent LEC's supported service. Second, wireless carriers, rather than wireline competitive LECs, have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support. These wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households. *See 2007 Commercial Mobile Services Report*, 23 FCC Rcd 2241, at para. 246 (citing survey reporting that only approximately 11. 8 percent of U.S. households relied exclusively on wireless phones in 2006). Thus, rather than providing a complete substitute for traditional wireline service, these

wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service.

21. This has created a number of serious problems for the high-cost fund, and calls into question the rationale for the identical support rule. Instead of competitive ETCs competing against the incumbent LECs for a relatively fixed number of subscriber lines, the certification of wireless competitive ETCs has led to significant increases in the total number of supported lines. Because the majority of households do not view wireline and wireless services to be direct substitutes, *see Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05–333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5218, para. 17 (2007) (stating that a majority of presubscribed interexchange customers also subscribe to mobile wireless service); *Commercial Mobile Services Report*, 23 FCC Rcd 2241, at para. 246 (2008) (citing survey reporting that approximately 11. 8 percent of U.S. households relied exclusively on wireless phones in 2006), many households subscribe to both services and receive support for multiple lines, which has led to a rapid increase in the size of the fund. In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs. Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas. *See* 47 U.S.C. 254(b)(3). Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their network. The Commission is currently considering eliminating the identical support rule. *Identical Support Rule NPRM*, 73 FR 11580.

22. We also find that the Commission's universal service principle of competitive neutrality does not preclude us from adopting an interim, limited cap under existing circumstances. *Universal Service First Report and Order*, 62 FR 32861, paras. 46–52 (subsequent history omitted) (''[W]e define this principle, in the context of determining universal service support, as: COMPETITIVE NEUTRALITY—Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.''). As discussed above, high-cost support has increased by $1. 7 billion—more than 65 percent—from 2001 to 2007. Continued growth at this rate would render the amount of high-cost support unsustainable and could cripple the universal service fund. To avert this crisis, it is necessary to place some temporary restraints on the fastest-growing portion of high-cost support, i.e., competitive ETC support. Moreover, as discussed above, it is not clear that identical support has, in reality, resulted in competitive neutrality. We therefore find that, rather than departing from the principle of competitive neutrality, as a matter of policy, we instead are temporarily prioritizing the immediate need to stabilize high-cost universal service support and ensure a specific, predictable, and sufficient fund. *See* 47 U.S.C. 254(b)(5), (d).

23. Finally, we reject arguments that the cap should not be adopted because it will not be truly interim in nature. The interim cap will remain in place only until the Commission adopts comprehensive, high-cost universal service reform. Thus, we are satisfied that the interim cap's life will be of limited duration.

Cap on Competitive ETC Support Would Not Inhibit Broadband Deployment in Rural America

24. Several commenters argue that the interim cap on competitive ETC support will inhibit the deployment of broadband services. With the exception of GCI, these commenters provide only anecdotal evidence of the possible effect of the interim cap on particular deployments, and do not systematically analyze the effect of the interim cap on broadband deployment. Moreover, although high-cost support for rural incumbent LECs has been capped for many years, that does not appear to have inhibited the deployment of broadband service to areas served by rural incumbent LECs. Indeed, high-cost universal service support may be used to invest in facilities to provide broadband service if those facilities are also necessary to provide voice grade access. *See Rural Task Force Order*, 66 FR 30080, paras. 199–201.

25. In light of the foregoing, we decline to adopt specific requirements for competitive ETCs regarding the provision of broadband Internet access services. Rather, we find that the role of high-cost support mechanisms in promoting broadband deployment is better addressed in a rulemaking of general applicability. In fact, the Commission currently is considering proposals to provide high-cost support for broadband service.

Design and Implementation of the Cap

Operation of the Cap

26. We adopt a cap on competitive ETC support for each state, as recommended by the Joint Board, subject to two limited exceptions described below. A competitive ETC cap applied at a state level will effectively curb growth, but, given a state's role in designating ETCs, will allow a state the flexibility to direct competitive ETC support to the areas in the state that it determines are most in need of such support. An interim, state-based cap on competitive ETC support also will avoid creating an incentive for each state to designate as many new ETCs as possible for the sole purpose of increasing support to that state at the expense of other states, which could occur had we adopted a single, nationwide cap. A state-based cap will require newly-designated competitive ETCs to share funding with other competitive ETCs within the state.

27. Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received under the existing (uncapped) per-line identical support rule, *see* 47 CFR 54.307, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.

28. For example, if, in State A, the capped amount is $90 million, and the total uncapped support is $130 million, the reduction factor would be 69.2 percent ($90/$130). In State A, each competitive ETC's uncapped support would be multiplied by 69.2 percent to reduce support to the capped amount. If, in State B, however, the capped amount is $100 million, and the total uncapped support is $95 million, there would be no reduction factor because the uncapped amount is less than the capped amount. Finally, if, in State C the base period capped amount is $0 (i.e., there were no competitive ETCs eligible to receive support in State C in March 2008), then no competitive ETCs would be eligible to receive support in that state during the interim cap. Each quarter, for the duration of the cap, a new reduction factor would be calculated for each state.

29. Some commenters argue that, in states where there currently are no competitive ETCs designated, subsequently designated competitive ETCs will receive no high-cost support while the interim cap remains in place. The Act does not, however, require that all ETCs must receive support, but rather only that carriers meeting certain requirements be *eligible* for support. 47 U.S.C. 214(e)(1); 254(e) (emphasis added). Section 214(e)(1) of the Act states, ''A common carrier designated as an eligible telecommunications carrier * * * shall be *eligible* to receive universal service support in accordance with section 254[.]'' 47 U.S.C. 214(e)(1) (emphasis added). Likewise, section 254(e) of the Act states, ''[O]nly an eligible telecommunications carrier designated under section 214(e) shall be *eligible* to receive specific Federal universal service support.'' 47 U.S.C. 254(e) (emphasis added). This language indicates that designation as an ETC does not automatically entitle a carrier to receive universal service support. *See Universal Service First Report and Order*, 62 FR 32861, para. 137 (''Indeed, the language of section 254(e), which states that 'only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive' universal service support, suggests that a carrier is not automatically entitled to receive universal service support once designated as eligible.''); *Alenco*, 201 F.3d at 620 (''The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*.''). Moreover, in section 254 of the Act, Congress distinguished between those who are merely ''eligible'' to receive support and those who are ''entitled'' to receive benefits. *Compare* 47 U.S.C. 254(e) *with* 47 U.S.C. 254(h)(1)(A) (providing that carriers offering certain services to rural health care providers ''shall be entitled'' to have the difference between the rates charged to health care providers and those charged to other customers in comparable rural areas treated as an offset to any universal service contribution obligation); *see also Transbrasil S.A. Linhas Aereas* v. *Dep't of Transp.*, 791 F.2d 202, 205 (D.C. Cir. 1986) (''[W]here different terms are used in a single piece of legislation, the Court must presume that Congress intended the terms have different meanings.''). We find that Congress's careful delineation demonstrates an intention to ascribe different statutory rights. Accordingly, even if imposition of the interim cap results in no support for some competitive ETCs, this result is not inconsistent with the Act.

30. Moreover, there are advantages to obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. Indeed, TracFone Wireless, Inc. (TracFone) sought forbearance from section 214(e)(1) of the Act so that it could seek designation as an ETC eligible only to receive universal service Lifeline support. TracFone took this step because ''offering prepaid plans which make wireless service available to low income users * * * has been a critical component of TracFone's business strategy since the company's inception.'' Other ETCs may have similar business strategies. Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that may not otherwise have taken telephone service. This would increase a competitive ETC's base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level. *See, e.g.*, Kan. Stat. Ann. 66–2008 (2006) (providing for the creation of a Kansas universal service fund (KUSF) and requiring that carriers be designated as an ETC pursuant to section 214(e)(1) of the Act to receive support from the KUSF).

31. We adopt two limited exceptions to the operation of the interim cap. First, consistent with the *ALLTEL-Atlantis Order* and the *AT&T-Dobson Order*, we find it in the public interest to adopt a limited exception to the interim cap if a competitive ETC submits its own costs. *See ALLTEL-Atlantis Order*, 22 FCC Rcd at 19521, paras 9–10; *AT&T-Dobson Order*, 22 FCC Rcd at 20329–30, paras. 70–72. Specifically, a competitive ETC will not be subject to the interim cap to the extent that it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC.

32. Second, we also adopt a limited exception to the interim cap for competitive ETCs that serve tribal lands or Alaska Native regions (the Covered Locations). We permit competitive ETCs serving Covered Locations to continue to receive uncapped high-cost support for lines served in those Covered Locations. Because many tribal lands have low penetration rates for basic telephone service, we do not believe that competitive ETCs are merely providing complementary services in most tribal lands, as they do generally. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96–45, Twelfth Report and Order, Memorandum Report and Order, and Further Notice of Proposed Rulemaking, 65 FR 47883, para. 2 (2000) (concluding that ''existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands.'').

33. Participation in this limited exception to the interim cap is voluntary and will be elected by the competitive ETC on a study area by study area basis. Therefore, any competitive ETC that does not or cannot opt into the limited exception, or that does not or cannot opt into the limited exception for a particular Covered Location, will remain subject to the interim cap as described herein. Support for competitive ETCs that do opt into the limited exception will continue to be provided pursuant to § 54.307 of the Commission's rules, except that the uncapped per line support is limited to one payment per each residential account. 47 CFR 54.307. If a competitive ETC serves lines in both Covered Locations and non-Covered Locations (or only Covered Locations), the universal service administrator shall determine the amount of additional support—after application of the interim cap—necessary to ensure that a competitive ETC receives the same per-line support amount as the incumbent LEC for the lines qualifying for the exception.

34. Finally compliance with the terms of this limited exception will be verified through certification and reporting

requirements. Specifically, a competitive ETC seeking to receive high-cost support pursuant to this limited exception must certify the number of lines that meet the limited exception requirements. The competitive ETC also must provide a specific description of how it confirmed that it had met the certification threshold.

35. Even with the total amount of support provided to competitive ETCs being capped, continued growth in competitive ETC lines would have the effect of reducing the amount of interstate access support (IAS) received by incumbent LECs, due to the operation of the formula for calculating IAS. *See* 47 CFR 54.800–54.808. To prevent the implementation of the interim cap on competitive ETC support from having this unintended consequence on incumbent LEC support, we find it necessary to adjust the calculation of IAS for both incumbent LECs and competitive ETCs. Accordingly, we divide IAS into separate pools for incumbent LECs and competitive ETCs and separately cap the amount of IAS support for both types of carriers. The annual amount of IAS available for incumbent LECs shall be set at the amount of IAS that incumbent LECs were eligible to receive in March 2008 on an annual basis. This amount shall be indexed annually for line growth or loss by price cap incumbent LECs. The annual amount of IAS available for competitive ETCs shall be set at the amount of IAS that competitive ETCs were eligible to receive in March 2008 on an annual basis. Subject to these constraints, we direct USAC to calculate and distribute IAS for each pool to eligible carriers consistent with the existing IAS rules.

Length of Time

36. In light of the harm to the sustainability of the universal service fund posed by the dramatic growth of support to competitive ETCs, we find that the cap we adopt today should become effective as soon as possible. The cap will, therefore, commence as of the effective date of this Order.

37. We emphasize that the cap on competitive ETC support that we adopt here is only an interim measure to slow the current explosion of high-cost universal service support while the Commission considers further reform. We remain committed to comprehensive reform of the high-cost universal service support mechanisms. The Commission has three outstanding rulemaking proceedings that consider comprehensive reform of high-cost universal service support. The Commission plans to move forward on adopting comprehensive reform measures in an expeditious manner. The Commission commits to completing a final order on comprehensive reform as quickly as feasible after the comment cycle is completed on the pending *Reform Notices.* We therefore do not believe that a fixed sunset date, as proposed by some commenters, is necessary or provides additional benefit.

Base Period for the Cap

38. Although we adopt the Joint Board's recommendation that the cap on competitive ETC support be set at the level of competitive ETC support actually distributed in each state, rather than set such a cap at the level of support actually distributed in 2006, we find it is more appropriate to set such a cap at the level of support competitive ETCs were eligible to receive during March 2008 on an annualized basis. Specifically, for each state, the annual interim cap shall be set at twelve times the level of support that all competitive ETCs were eligible to receive in that state for the month of March 2008. Using March 2008 data allows use of more recent actual support amounts than 2006. Use of March 2008 as the base period, moreover, will ensure that funding levels will not undermine the expectations underlying competitive ETC investment decisions or result in immediate funding reductions. Further, consistent with our decision to cap competitive ETC support on an interim basis, we find it inappropriate and counterproductive to index the cap to a growth factor.

39. Although the interim cap that we adopt today applies only to the amount of support available to competitive ETCs, it does not restrict the number of competitive ETCs that may receive support. In fact, as part of this Order, we grant, to the extent described in Appendix B, numerous applications for ETC designation currently pending before the Commission. As described in more detail in Appendix B, we find that the applicants have met the Commission's requirements for designation. We also amend an ETC designation as described in Appendix C. These designations, however, do not affect the amount of support available to competitive ETCs, which is limited by the interim cap we adopt in this Order.

Procedural Matters

Final Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), *See* 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice. Federal-State Joint Board on Universal Service,* WC Docket No. 05–337, CC Docket No. 96–45, Notice of Proposed Rulemaking, 72 FR 28936 (2007) (*Notice*). The Commission sought written public comment on the proposals in the *Notice,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

Need for, and Objectives of, the Proposed Rules

41. On May 1, 2007, the Joint Board recommended that the Commission adopt an interim cap on high-cost universal service support for competitive ETCs to rein in the explosive growth in universal service. *Recommended Decision,* 22 FCC Rcd 8998 (Appendix A). We agree with the Joint Board's assessment that the rapid growth in high-cost support places the federal universal service fund in dire jeopardy. In 2006, the universal service fund provided approximately $4.1 billion per year in high-cost support. In contrast, in 2001, high-cost universal service support totaled approximately $2. 6 billion. In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support, in the six years from 2001 through 2006, has grown from under $17 million to $980 million—an average annual growth rate of over 100 percent. Competitive ETCs received $557 million in high-cost support in the first six months of 2007. Annualizing this amount projects that they will receive approximately $1. 11 billion in 2007. We find that the continued growth of the fund at this rate is not sustainable and would require excessive (and ever growing) contributions from consumers to pay for this fund growth.

42. We conclude that immediate action must be taken to stem the dramatic growth in high-cost support. Therefore, we immediately impose an interim cap on high-cost support provided to competitive ETCs until fundamental comprehensive reforms are adopted to address issues related to the distribution of support and to ensure that the universal service fund will be sustainable for future years. The interim cap that we adopt herein limits the amount of high-cost support that competitive ETCs can receive in the interim period to the amount they were

eligible to receive in March 2008 on an annualized basis.

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

43. None.

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

44. 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(5). 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) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). 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. *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at 40 (July 2002). 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.

45. 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. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, page 5–5 (February 2007) (Trends in Telephone Service). The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, 13 CFR 121. 201, North American Industry Classification System (NAICS) code 517110, Paging, 13 CFR 121. 201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to ''Wireless Telecommunications Carriers (except Satellite),'' NAICS code 517210.), and Cellular and Other Wireless Telecommunications. 13 CFR 21. 201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to ''Wireless Telecommunications Carriers (except Satellite),'' NAICS code 517210.). 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

46. 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.

47. *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. 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.

48. *Competitive LECs, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,''* and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category ''Wired Telecommunications Carriers.'' Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 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

49. *Wireless Service Providers.* The appropriate size standard for wireless service providers is the category of ''Wireless Telecommunications Carriers (except Satellite).'' Under that standard, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The data necessary to estimate the number of entities in this category has not been gathered since it was adopted in November 2007. Therefore, we will use the earlier, now-superceded categories—''Paging'' and ''Cellular and Other Wireless Telecommunications''—to estimate the number of entities. 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.

50. *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 ''Wireless Telecommunications Carriers (except Satellite).'' Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. The data necessary to estimate the number of entities in this category has not been gathered since it was adopted in November 2007. Therefore, we will use the earlier, now-superceded categories of ''Cellular and Other Wireless Telecommunications'' to estimate the number of entities. 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

51. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''All Other Telecommunications.''

52. 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.'' Under this category, the SBA size standard is $13.5 million or less in aveage annual receipts. 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.

53. The second category of ''All 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.'' The SBA size standard for ''All Other Telecommunications'' is $23.0 million or less in average annual revenues. 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

54. In order to qualify for the exception to the interim cap, some small carriers serving tribal lands or Native Alaskan regions will be required to file certifications that they qualify for the exception. Other small carriers may qualify for an exception if they file data reporting their costs of serving high-cost areas for which they seek the exception to be applied.

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

55. 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. *See* 5 U.S.C. 603(c).

56. In adopting the interim cap, the Commission considered several alternatives to minimize the cap's effect on small entites. We adopt an exception to the rule for carriers providing services to tribal lands. We also note that the Commission is examining ways to comprehensively reform federal high-cost universal service. The interim cap that the Commission adopts today is an interim measure that will be replaced by comprehensive reforms which will be developed in the future and which will minimize any economically adverse effect of the cap on small businesses.

Report to Congress

57. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and the FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Paperwork Reduction Act Analysis

58. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995). It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' Small Business Paperwork Relief Act of 2002, Public Law 107–198, 116 Stat. 729 (2002); 44 U.S.C. 3506(c)(4).

59. In this present document, we have assessed the effects of demonstrating compliance with the exception to the interim cap, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. First, we note that compliance with the exception is voluntary—small business concerns are not required to comply with the information collection. In addition, compliance with the exception will be elected by carriers on a study area by study area basis. Carriers need only provide additional information on the study areas for which they elect to rely on the exception to the interim cap.

Congressional Review Act

60. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

61. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, 405, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 218–220, 254, 303(r), 403, 405, and 410, that this Order in CC Docket No. 96–45 and WC Docket No. 05–337 is adopted.

62. *It is further ordered* that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. 214(e)(6), the petitions for eligible telecommunications carrier designation as set forth in Appendix B *are granted, denied, or dismissed without prejudice* to the extent described therein and, pursuant to § 1. 103(a) of the Commission's rules, 47 CFR 1. 103(a), *shall be* effective thirty days after publication in the **Federal Register**, except where redefined service areas require the agreement of a state commission as described therein.

63. *It is further ordered* that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. 214(e)(5), and §§ 54.207(d) and (e) of the Commission's rules, 47 CFR 54.207(d) and (e), the requests to redefine the service areas of the rural telephone companies described in Appendix B, *are granted, denied,* or *granted in part and denied in part* to the extent described therein and subject to the agreement of the relevant state commissions with the Commission's redefinition of the relevant service areas, if not previously redefined as described therein.

64. *It is further ordered* that a copy of this order *shall be* transmitted by the Office of the Secretary to the relevant state commissions and the Universal Service Administrative Company.

65. *It is further ordered* that the petitioners set forth in Appendix B shall submit additional information pursuant to § 54.202(a) of the Commission's rules, 47 CFR 54.202(a).

66. *It is further ordered* that NEP Cellcorp, Inc.'s Motion to Strike is dismissed as moot as described in Appendix B to the Order.

67. *It is further ordered* that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. 214(e)(6), RCC Minnesota, Inc. and RCC Atlantic, Inc.'s ETC designation in New Hampshire is amended as set forth in Appendix C to the Order.

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

69. *It is further ordered*, that this Order *shall be effective* thirty days after publication in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14897 Filed 7–1–08; 8:45 am]

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