

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

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

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on: A market analysis that the Commission intends to undertake in the coming months to assist in evaluating competition in the market for special access services; possible changes to the Commission's pricing flexibility rules after the Commission conducts its market analysis; and the reasonableness of terms and conditions offered by incumbent LECs in the special access market.

**DATES:** Comments for sections IV.A and IV.C are due on or before February 11, 2013. Reply comments for sections IV.A and IV.C are due on or before March 12, 2013. Comments for section IV.B are due on or before August 19, 2013. Reply comments for section IV.B are due on or before September 30, 2013.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 05–25, RM–10593, FCC 12–153, adopted on December 11, 2012, and released on December 18, 2012. This summary should be read with its companion document, the Report and Order summary published elsewhere in this issue of the *Federal Register*. The summary is based on the public redacted version of the document, the full text of which is available electronically via the Electronic Comment Filing System at <http://fjallfoss.fcc.gov/ecfs/> or may be downloaded at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-153A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-153A1.pdf). The full text of this document is also available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY–

A257, Washington, DC 20554. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternate formats for persons with disabilities (e.g. Braille, large print, electronic files, audio format, etc.) or reasonable accommodations for filing comments (e.g. accessible format documents, sign language interpreters, CARTS, etc.), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

#### I. Further Notice of Proposed Rulemaking

1. We now commence a process to more effectively determine where relief from special access regulation is appropriate and otherwise update our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to services used by businesses across the country. In Section I.A, below, we propose and seek comment on a market analysis that we intend to undertake in the coming months to assist the Commission in evaluating whether the pricing flexibility rules result in just and reasonable special access rates and what regulatory changes may be needed. We anticipate that the analysis will be a one-time assessment of the competitive conditions in the special access market; however, we do not foreclose the possibility that further analyses may be needed in the future.

2. Our proposed market analysis is only one step in our process. Once the data are collected and analyzed, we may modify the existing pricing flexibility rules or adopt a new set of rules that will apply to requests for special access pricing flexibility. In section I.B below, we seek comment on how the special access pricing flexibility rules might change after we conduct our market analysis. We also seek comment on what steps the Commission should take where relief has been provided under our existing rules and where the data and our analysis demonstrate that competition is not sufficient to discipline the marketplace. Finally, we seek in section I.C data and information on the terms and conditions offered by incumbent LECs for special access services to facilitate our understanding of competition in the special access market and our ability to craft rules that properly address the state of the marketplace.

#### A. Approach To Analyzing Special Access

##### 1. Background

3. In the *Analytical Framework Public Notice*, the Bureau sought comment on a methodology that could be employed to evaluate the efficacy of the special access regulatory regime. The Bureau requested that parties propose an analytic framework capable of assessing whether the Commission's price cap and pricing flexibility rules ensure just and reasonable rates, as well as just and reasonable terms and conditions in special access tariffs and contracts. The Bureau noted that once the Commission adopted

an analytical approach enabling a systematic determination of whether or not the current regulation of special access services is ensuring rates, terms, and conditions that are just and reasonable as required by the Act, [the Commission] c[ould] determine what, if any, specific problems there are with the current regime and formulate specific solutions as necessary.

4. The Bureau subsequently held a staff workshop to gather further input on the analytic framework proposals raised in the record and any associated data collection that would be required to implement such proposals. In response to the *Analytical Framework Public Notice*, as well as through the staff workshop, commenters set forth several proposals for an analytic framework that the Commission could implement to evaluate the current special access rules.

##### 2. Proposals in the Record

5. Several parties recommend that the Commission adopt a market power analytic framework in lieu of the *Pricing Flexibility Order's* competitive showing rules. In the past, the Commission has defined market power as the power to control price. The U.S. antitrust agencies have also expanded their definition of market power to include the ability to “reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.” A market power analysis commonly evaluates separately “competition for distinct services, for example differentiating among the various retail services purchased by residential and small, medium, and large business customers, and the various wholesale services purchased by other carriers” in a distinct geographic area. A market power analysis also typically involves the consideration of providers' market shares, supply and demand elasticity, and carriers' cost structures, size, and access to resources.

6. Commenters voicing support for adoption of a market power framework state that it will ensure that, going forward, the Commission's evaluation of competition for special access is a comprehensive, economically sound, and data-driven means of understanding where and what kinds of regulatory relief are justified. Other commenters raise concerns about a market power framework, stating, for example, that the questions at the heart of a traditional market power analysis used in transaction review, such as how to define markets or analyze demand and supply responsiveness, have been made irrelevant by competition; that such an approach is not an administratively workable way to address individual petitions for pricing flexibility; that it is impractical to determine whether a firm has market power where baseline prices are regulated; and that a market power framework is inconsistent with the Commission's goals for the deregulation of telecommunications services.

7. Another analytic framework proposed in the record involves comparing actual purchase prices for special access to specific benchmarks, such as rates for reasonably similar services (e.g., rates for UNEs, retail broadband services such as DSL or cable modem service, or rates in price cap areas as compared to pricing flexibility areas), the costs associated with providing special access services (e.g., forward-looking costs), or rate-of-return estimates (e.g., ARMIS rates-of-return). Commenters assert that where special access prices are higher than such benchmarks, the Commission should find that the competitive showings adopted in the *Pricing Flexibility Order* are insufficient to ensure just and reasonable rates. Incumbent LECs, on the other hand, assert that the proposed benchmarks are neither necessary—because special access rates have already been “set” by the competitive marketplace—nor do they provide a reasonable proxy for special access rates. Such carriers do, however, state that the Commission may be better positioned to develop its own cost benchmark after collecting data on special access prices and the presence of competition in specific geographic markets.

8. Some commenters recommend that the Commission adopt a framework that would facilitate deregulating quickly in anticipation of future competition. For example, AT&T recommends that, rather than perform a more granular analysis of individual petitions for pricing flexibility, the Commission extend blanket Phase I relief to all special access services, fully de-regulate

OCn and packet-based services, and extend Phase II relief to areas where the existing competitive showing requirements do not fully detect the extent of competitive entry. Another analytic framework proposed by AT&T would examine whether the price cap rules are producing the marketplace benefits expected under incentive regulation. In particular, where evidence suggests that “carriers are investing to become more efficient and innovative, that carriers are working to provide better services at the same or lower prices, that competitors are responding with increased entry, and that output is increasing,” the Commission should conclude that pricing flexibility is operating properly in its current form. Competitive carriers, on the other hand, disagree that expectations of future competition warrant quick deregulation. They raise concerns that, particularly in Phase II markets, incumbent carriers have increased special access rates to supracompetitive levels. They assert that the Commission must adopt a regulatory framework that curtails this practice. Ad Hoc and Sprint, for example, propose a “hybrid approach,” in which carriers may obtain unlimited “downward pricing flexibility” in combination with price caps in all markets.

9. Incumbent carriers also propose that the Commission adopt a framework for analyzing requests for pricing flexibility that takes into account both actual and potential competition, such as competition from non-collocating providers or those competitors who could quickly enter the market in the near term. For example, AT&T and Verizon propose that the Commission permit pricing flexibility in areas where the competitive showing requirements are not met but carriers can point to sources of actual or potential competition, such as the existence of alternative fiber in the area served by specific wire centers or facilities-based competitors providing service in wire centers where there is no collocation. Verizon also argues that the Commission should modify the criteria for Phase II relief to allow price cap LECs to make a *prima facie* case that the competitive showings are satisfied by introducing evidence of competitive facilities in an MSA where insufficient competitive collocation exists to meet the competitive showing requirements. Some commenters, however, such as Public Knowledge and Time Warner Telecom, raise questions about the extent to which potential competition is

germane to an analysis of special access market conditions.

10. Finally, several commenters, in particular incumbent LECs, recommend that, prior to implementing a new framework for special access pricing flexibility, the Commission collect additional data to assess whether the current competitive showing rules are a reasonably accurate proxy for the presence of competition. For example, during the 2010 staff workshop, one economist suggested that the Commission

[l]ook at areas with different degrees of competition and across such areas compare prices and measures of competition and other terms and conditions controlling for relative factors such as density, access lines, customer characteristics, and then use statistical analysis to see what you can say about the relationship between prices and measures of competition controlling for other costs or demand-based factors.

In his view, such findings could potentially be used to evaluate the existing pricing flexibility rules and craft new or modified rules if the data indicate that the existing rules are deficient. Incumbent LECs assert that further data collection is necessary because competitive carriers did not provide sufficient data in response to the two voluntary data requests issued by the Commission in 2010 and 2011. Some competitive carriers, however, argue that it is not necessary for the Commission to collect additional data prior to adopting a new regulatory scheme for special access pricing flexibility.

### 3. A One-Time, Multi-Faceted Market Analysis

11. Based on our review of the record, we propose to conduct as one step in our proceeding a one-time, multi-faceted market analysis to obtain a more accurate picture of competition for special access. In combination with the comprehensive data collection described in the above Report and Order, we expect that the market analysis we propose will best assist the Commission in evaluating market conditions for special access services and determining what regulatory changes, if any, are warranted in light of that analysis.

12. We propose to perform a one-time, multi-faceted market analysis of the special access market designed to determine where and when special access prices are just and reasonable, and whether our current special access regulations help or hinder this desired outcome. We do not propose to conduct a simple market share or market concentration analysis. Rather, we will

use the data we are collecting in this Report and Order to identify measures of actual and potential competition that are good predictors of competitive behavior, for example, by demonstrating that prices tend to decline with increases in the intensity of various competition measures, holding other things constant. In undertaking that analysis we will consider evidence as to what leads firms, including competitive providers, to undertake infrastructure investments. In so doing, we will consider whether our current regulatory regime may be hindering, for example, by keeping prices low, competitive investments that would reduce or obviate the need for regulation. The analysis will seek to control for factors that could reasonably be expected to affect prices and competitive investment, such as actual and potential competition from services that are substitutes for special access (regardless of technology), the nature of the services supplied, demand intensity, historical proximity and state and federal regulation. The one-time, multi-faceted market analysis will help the Commission determine whether any market participants have market power and, if so, where such market power exists. This will better allow us to determine the sources of such market power, the likely extent to which it is sustainable over time, and how to construct (where required) targeted regulatory remedies. In addition, the analysis should help the Commission determine what barriers inhibit investment and delay competition, including regulatory barriers, and any other barriers, and what steps the Commission could take to remove such barriers to promote a robust competitive market and permit the competitive determination of price levels.

13. As part of our one-time, multi-faceted market analysis we propose to conduct panel regressions designed to determine how the intensity of competition (or lack thereof), whether actual or potential, affects prices, controlling for all other factors that affect prices. Specifically, we propose to undertake econometric modeling to estimate the effect of competition from facilities-based providers, among other things, on the prices of special access services. The modeling would develop panel regressions of the prices for special access on characteristics such as: (1) The number of facilities-based competitors (both actual and potential); (2) the availability of, pricing of, and demand for best efforts business broadband Internet access services; (3) the characteristics of the purchased

service; and (4) other factors that influence the pricing decisions of special access providers, including cost determinants (*e.g.*, density of sales) and factors that deliver economies of scale and scope (*e.g.*, level of sales). The panel regressions (and our analysis more generally) would seek to control for the fact that firms set prices and make competitive investment decisions taking into account a variety of factors, including existing and expected prices, investments (including as informed by advertised offerings), and regulatory rules (*e.g.*, whether the incumbent has received pricing flexibility and for what services). In particular, we expect to control for the fact that prices, which regulation impacts, likely play a role in entry decisions. The precise form of econometric modeling we conduct will be dependent, in large part, on the nature and the quality of the data produced in response to the Order. We expect that the output of such panel regressions will assist us in delineating both relevant product and geographic markets. In conjunction with data on providers' business rules, it will also help us predict where and how potential competition will occur, as noted above.

14. There are three key reasons for our proposal to undertake a one-time, multi-faceted market analysis. First, a data-intensive market analysis will enable us to determine more precisely where, and to what extent, actual and potential competition for special access is likely to constrain prices as well as the factors that drive investment and competition, as described above. At this time there is insufficient evidence in the record upon which to base general or categorical conclusions as to the competitiveness of the special access market. Likewise, the record provides an insufficient basis for us to identify reliable competitive showing rules for granting pricing flexibility in defined geographic areas going forward. As a result, we believe that a one-time, multi-faceted market analysis, performed in conjunction with a comprehensive data collection, will aid the Commission in developing better tests for regulatory relief to replace the collocation-based standards.

15. Second, a one-time, multi-faceted market analysis will benefit special access providers and purchasers by facilitating a thorough assessment of competitive conditions. For example, a wide range of commenters, including incumbent providers, competitive providers, and other interested parties, state that the Commission cannot gauge the extent of competition based on a single market characteristic, such as purchase prices, carrier revenues, or

market share. We agree, and we believe that the Commission must conduct a more comprehensive analysis of the state of competition prior to replacing the rules by which incumbent LECs may obtain regulatory relief in the provision of special access services. We propose to conduct a nuanced market analysis that incorporates a variety of factors, as detailed above, to assess the effect of competition on special access prices.

16. Third, a one-time, multi-faceted market analysis supplements a structural market analysis with econometrically sound panel regressions. The Commission has repeatedly undertaken structural market analyses to assess competition for telecommunications services and determine whether deregulation is warranted. Historically, the Commission's structural analysis—which focused on certain “clearly identifiable market features,” including a carrier's market share, number and size distribution of competing firms, the nature of competitors' barriers to entry, the availability of reasonably substitutable services, the level of demand elasticity, and whether the firm controlled bottleneck facilities—was designed to identify where competition is sufficient to constrain carriers from charging unjust or unreasonable rates, or from acting in an otherwise anticompetitive manner. The one-time, multi-faceted market analysis follows this precedent by incorporating a structural market analysis, but it also goes further by supplementing the analysis with econometrically sound panel regressions to determine how the intensity of competition (or lack thereof), whether actual or potential, affects prices, controlling for all other factors that affect prices.

#### 4. Request for Comment on One-Time, Multi-Faceted Market Proposed Analysis

17. We seek comment on this one-time, multi-faceted market analysis. In contrast to the approach of our pricing flexibility rules, which are currently suspended, we anticipate that this analysis is likely to identify all significant current and potential market participants, and consider their effect when assessing the level of competition in a market. We seek comment on this conclusion. Are there significant competitors who would not be easily accounted for under the proposed analysis, such as firms who self-supply their own special access? Is such an approach likely to show whether a specific provider is a probable source of competition in a given geographic area, *i.e.*, that its presence could reasonably

be found to constrain special access prices?

18. Will the proposed one-time, multi-faceted market analysis facilitate a comprehensive, forward-looking evaluation of competitive conditions? Should certain factors be weighted more or less heavily in our analysis? How can we balance the need for an analysis that is forward-looking with the importance of relying on non-speculative data?

19. Does the one-time, multi-faceted market analysis effectively address concerns regarding use of a traditional structural analysis in this context? For example, incumbent LECs assert that special access pricing flexibility should not be treated as akin to the dominance/non-dominance analyses undertaken by the Commission in the *Competitive Carrier* proceeding. They argue that a dominance/non-dominance analysis is inappropriate in the special access context because “[t]he pricing flexibility rules are merely an incremental measure within the context of dominant carrier regulation.” Does the one-time, multi-faceted market analysis with panel regressions address these concerns?

20. Will the market analysis we propose facilitate a useful examination of potential barriers to broadband deployment and investment? AT&T recently argued that the Commission’s special access rules have hindered carriers’ transition to IP-based services, and that they encourage reliance on legacy services. How can we structure our analysis to appropriately take into account the fact that some carriers may be transitioning away from legacy services toward IP-enabled services? How can we structure our analysis to account for all services that enterprise customers view as substitutable, including services used by small- and medium-sized businesses? How should we analyze the markets to determine the effect that various federal regulations have on the pricing and deployment decisions of providers as well as the purchasing decisions of customers?

21. Specifically, how should our analysis account for “best efforts” services? To the extent best efforts services are potential substitutes for special access services, how should the price of such services inform our analysis of the justness and reasonableness of special access pricing?

22. Finally, we seek comment on how best to balance the need for analytic rigor with the requirement that our analysis be administratively feasible. We note that commenters have raised concerns about the administrative feasibility of a market analysis, in particular with respect to proposals to

require individual market analyses on an ongoing basis in lieu of the competitive showing rules adopted in the *Pricing Flexibility Order*. We seek comment on whether, because we will be analyzing many facets of the market only one time, our analysis will give rise to the administrative burdens raised by some commenters in the record.

23. We note that the analysis we propose conducting here is a one-time analysis. We are mindful of the importance of balancing the accuracy of our analysis with the need for administrative efficiency. The record makes clear that we are unlikely to be able to conduct a comprehensive market analysis—and thus are unlikely to be able to evaluate the impact of the suspended rules on the reasonableness of special access rates, terms and conditions or develop improved ones—without the data similar to that described above and a more detailed review of competitive conditions in the special access market than has been possible to date. However, we anticipate that the one-time, multi-faceted market analysis will allow us to identify reliable new proxies for special access competition, which could be employed going forward to evaluate petitions for pricing flexibility in a consistent, streamlined manner. The goal of the proposed market analysis is to gain a fulsome picture of competition in the special access market, so that we can develop rules to more precisely provide regulatory relief where it is justified. In subsection I.B., below, we seek comment on possible changes to our pricing flexibility rules that we might adopt after we collect the data specified above and conduct the proposed market analysis.

24. To the extent that commenters assert that a one-time, multi-faceted market analysis is not necessary or appropriate at this time, we urge such commenters to propose alternate actions that the Commission could take in the near future to obtain a more complete understanding of competitive conditions for special access services. Commenters are also encouraged to submit data to support their assertions, particularly those arguments concerning special access market conditions.

#### *B. Possible Changes to Pricing Flexibility Rules After Proposed One-Time, Multi-Faceted Market Analysis*

25. As discussed above, our market analysis is intended to provide a more complete picture of special access competition. The comprehensive data request described in the Report and Order above will identify and require submission of the data needed to

implement any market analysis we adopt, including the specific analysis proposed in this Further Notice. Once the data are collected and analyzed, we may modify the existing pricing flexibility rules or adopt a new set of rules that will apply to requests for special access pricing flexibility. As a general matter, however, we propose to adopt rules that will allow for the relaxation or even the elimination of price cap regulation where we find the presence of actual or potential competition sufficient to ensure that rates, terms and conditions for special access services remain just and reasonable. To that end, we seek comment on how the special access pricing flexibility rules might change after we conduct the market analysis proposed above. We also seek comment below on what steps the Commission should take where relief has been provided under our existing rules and where the data and our analysis demonstrate that competition is not sufficient to discipline the marketplace.

26. *Factors Demonstrating Competition.* Our proposed analysis may enable us to identify specific factors that could serve as a proxy for the presence or absence of special access competition in an identified geographic area. The competitive showing rules adopted in the 1999 *Pricing Flexibility Order* were intended to serve such a purpose; however, as the Commission noted in the *Special Access Pricing Flexibility Suspension Order*, those rules were not an effective proxy for special access competition as predicted in the *Pricing Flexibility Order*. We seek comment on the viability of proxies as a means of measuring special access competition going forward. Should we replace our MSA- and collocation-based competitive showing rules with proxy rules based on specific factors identified by our analysis? Or is it preferable to evaluate competition on a case-by-case approach? Alternatively, should our rules incorporate elements of both a proxy-based and a case-by-case approach?

27. For those commenters who advocate a case-by-case approach as opposed to proxy-based rules for pricing flexibility, we request input on how such a process could operate. Should the Commission, for example, perform a market analysis in response to individual petitions for pricing flexibility? If so, who should be eligible to submit such petitions? How might we reduce the potential administrative burdens associated with such a process?

28. For those commenters who advocate a proxy-based approach, we

seek comment on what appropriate proxies for special access competition are. For example, in the *Special Access Pricing Flexibility Suspension Order*, we used business establishment density as one means of measuring business density within an MSA. Could business establishment density be an appropriate proxy for special access competition? Again, we expect that our data collection and proposed regression analysis will prove informative on this issue. However, in light of the suspension of the collocation-based triggers in the *Special Access Pricing Flexibility Suspension Order*, we welcome feedback on what a more accurate proxy might be. How could we craft rules to enable us to easily but effectively identify the existence of competition in a given geographic area?

29. We also seek particular comment on how to evaluate potential competition. How might the rules incorporate the factors identified by our analysis in determining where competition is likely to occur in the future? Conversely, how might the rules be crafted to account for areas where competition may decline in the future?

30. *Nature of Relief*. Our market analysis may indicate that different levels of competition warrant various levels of relief from regulation. We seek comment on what the appropriate level of relief is for various types of competition. For example, is it still appropriate to grant Phase I and Phase II pricing flexibility and, if so, what factors should guide the level of relief granted? Or are there some other variations of pricing deregulation we should adopt? Is it appropriate, as incumbent LECs such as AT&T assert, to remove all dominant carrier regulations from those areas we deem competitive? Are there other approaches? For example, should Phase I or Phase II relief only be available to those providers whose special access prices meet specific cost benchmarks, as proposed by a subset of special access purchasers? What rules should we adopt in those areas which our data, and a sound market analysis, show are likely to be competitive in the future?

31. *Updating Competition Data*. We seek comment on whether and how the competitive information derived from the regression analysis should be updated. If so, how often should the data be updated? What process could the Commission employ to provide for recurrent updates of the competition data?

32. *Geographic Area*. In addition to providing information on the issues described above, the regression analysis proposed in this Further Notice may

help identify with geographic precision those areas that are subject to actual and potential special access competition today. For example, the analysis may enable the Commission to create a map of the United States that details the extent of competition with respect to special access services, including potential competition, in different areas of the country. We seek comment on whether and how the Commission could use a granular geographic analysis of competition to modify its existing regulatory treatment of special access services. In particular, in addition to any proxies adopted to grant special access relief on a forward-going basis, should the Commission relieve incumbent LEC special access providers from price cap regulations in geographic areas that the analysis identifies as subject to competition? Should the Commission adopt a presumption that pricing flexibility is warranted in such areas? If so, should the Commission presume that Phase I relief or Phase II relief, or a combination of both, is appropriate?

33. Conversely, what should the Commission do if the analysis indicates that areas in which incumbent LECs have been granted pricing flexibility are not subject to competition? Some parties have suggested that the Commission should require incumbent LEC special access providers to automatically revert to price caps in areas without competition, while others have asserted that such a conversion would be impractical, unlawful, and unsupported by the record. We seek comment on these proposals, and other potential approaches. Should the Commission require parties to prove harm, *i.e.*, that rates, terms and/or conditions are unjust and unreasonable, before changing the rules applicable to an area that where Phase I or Phase II relief has previously been granted? The Commission previously has sought comment on how to validate or rebut assertions that the current price cap rules are ensuring just and reasonable rates. Parties should include any new information or arguments that may be relevant to the Commission's consideration of what action, if any, may be appropriate with respect to modifying or updating our price cap rules.

34. Should the Commission incorporate a petition process by which a party can rebut a presumption that competition does or does not exist in a given geographic area? If so, who should be permitted to file such petitions and what showing should they be required to make? Alternatively, should the Commission adopt a petition process that requires carriers or others to

supplement the results of our analysis to support specific requests for changes in regulatory treatment? If geographic areas are subject to regulatory adjustment based on such a petition process, who should be eligible to submit such petitions and how will they obtain access to the data they need to evaluate the existence of competition? Which regulatory changes should be covered by the petition process (*e.g.*, removal of price caps, reversion to price caps, change in status from Phase I to Phase II regulatory relief and vice versa)? If the Commission were to adopt any of the changes proposed above, what would be an appropriate transition period for such regulatory changes to take effect? What steps should we take to ensure that regulatory changes occur smoothly and predictably?

35. Our record contains a great deal of discussion about the appropriate geographic market to measure special access competition for the purposes of evaluating requests for pricing flexibility. Commenters have suggested, for example, that the Commission assess special access competition at the MSA level, at the wire center level, and on a building-by-building or a route-specific basis. We seek to refresh the record on this issue based on the additional data that will be collected. What geographic area would be the most appropriate for us to employ in new or modified special access rules? How can we balance the potential administrative costs of a more granular review with the possible concerns associated with applying our pricing flexibility rules to large geographic areas? How could the results of our proposed regression analysis be incorporated into new or modified pricing flexibility rules? For instance, how should the Commission utilize a competition map, as described above, to select an appropriate geographic area for measuring special access competition? How could our rules account for likely variance in network footprints among classes of providers (for example, cable companies may have a nationwide footprint, while incumbent LECs and competitive LECs more often offer service on a regional basis).

### C. Terms and Conditions

36. To more fully understand competition in the special access market and appropriately craft rules for regulatory relief, we will also seek data and information on the terms and conditions offered by incumbent LECs for special access services. The *Special Access NPRM* initiated a broad examination of what regulatory framework to apply to price cap LECs' interstate special access services

following the expiration of the CALLS plan. In addition to asking whether to maintain or modify the Commission's pricing flexibility rules, the Commission sought comment on whether any of the terms and conditions under which incumbent LECs provide special access are exclusionary and unreasonable. The Bureau subsequently sought data and information on this issue in the *Special Access Competition Data Public Notice*. The record would benefit from additional, specific, and detailed discussion of terms and conditions which are alleged to be unjust or unreasonable.

37. The reasonableness of terms and conditions has triggered a significant amount of debate in the last two years. Purchasers allege that to provide a viable retail service they must enter into volume and term commitment plans with incumbent LECs to obtain price discounts and circuit portability benefits that are critical to their ability to remain competitive. Purchasers further allege these plans are subject to shortfall, overage, and early termination penalties that, combined with the potential loss of a discount for failing to meet the requisite commitment level, effectively lock-in demand and deter market entry by preventing purchasers from switching to a competing provider. Parties also allege that incumbent LECs are engaging in anticompetitive tying arrangements that give purchasers benefits for services purchased in areas where the incumbent has market power in exchange for the purchase of services in more competitive markets. Incumbent LECs vigorously dispute these allegations.

38. In light of this record, we seek data and information related to this issue in the comprehensive data request described above, and seek comment on these allegations. What specific terms and conditions do commenters find unjust or unreasonable, and in what contexts? Are there terms and conditions that are unjust or unreasonable only when imposed in areas where a provider has market power? If so, is the analysis we propose above sufficient to allow us to identify areas where market power exists, and thus to determine whether a particular term or condition is unreasonable in a given area or that anticompetitive tying between competitive and non-competitive areas is occurring? If so, what would be the most effective remedy or remedies?

## II. Procedural Matters

### A. Paperwork Reduction Act Analysis

39. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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).

### B. Initial Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in section V.C of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

41. In this FNPRM we commence a process to more effectively determine where relief from special access regulation is appropriate and otherwise update our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. In Section I.A we propose and seek comment on a market analysis that we intend to undertake in the coming months to assist the Commission in evaluating whether the pricing flexibility rules result in just and reasonable special access rates and what regulatory changes may be needed. In section IV.B we seek comment on how the special access pricing flexibility rules might change after we conduct our market analysis. We also seek comment on what steps the Commission should take where relief has been provided under our existing rules and where the data and our analysis demonstrate that

competition is not sufficient to discipline the marketplace. Finally, we seek in section IV.C comment on the terms and conditions offered by incumbent LECs for special access services to facilitate our understanding of competition in the special access market and our ability to craft rules for regulatory relief that properly address the state of the marketplace.

#### 2. Legal Basis

42. This rulemaking action is supported by sections 1, 4(i), 4(j), 5, 201-205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended.

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

43. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. SBA restated its concerns in its comments filed in 2007.

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

45. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

46. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to

Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Order.

47. *Incumbent Local Exchange Carriers (incumbent LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

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

49. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive

local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

50. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

51. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

52. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.

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

53. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

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

55. *800 and 800-Like Service Subscribers*. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.

According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

56. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

57. *Broadband Personal Communications Service*. The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for “very small business”

was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

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

gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

59. *Narrowband Personal Communications Services*. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

60. *Paging (Private and Common Carrier)*. In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.

Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

61. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the Order.

62. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a “small business” is an entity that,

together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.

Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

63. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

64. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in

2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

65. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

66. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find

that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

67. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had

employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

68. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses, identified as "entrepreneur" and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

69. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C

Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

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

71. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a

small business that won a total of two licenses.

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

73. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

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

75. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except

Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

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

77. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for

the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

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

79. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede

data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

80. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

81. *Local Multipoint Distribution Service (“LMDS”).* Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

82. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth

and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and persons or entities, that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

83. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

84. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a “small business” as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a “very small business” as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

85. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial

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

86. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census’ use of the classifications “firms” does not track the number of “licenses.” The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

87. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

88. *Satellite Telecommunications.* Since 2007, the SBA has recognized

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

89. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

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

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

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

93. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate less than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size

standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

94. *Open Video Services.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

95. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to

Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

96. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).” The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

97. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily \* \* \* provid[e] infrastructure for hosting or data processing services.” The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under \$

\$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

98. *All Other Information Services.* The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).” Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

99. The analysis addressed in this Initial Regulatory Flexibility Analysis will be performed on data collected as described in the Report and Order section of this document. There are no reporting requirements associated with the proposals in this Further Notice of Proposed Rulemaking. A Final Regulatory Flexibility Analysis of that data collection is addressed in Appendix B.

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

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

101. The proposals in this Further Notice of Proposed Rulemaking address

the analysis of data. It does not address the collection of that data. The data collection is addressed in the Report and Order and the Final Regulatory Flexibility Analysis at Appendix B. Therefore, there are no reporting requirements considered in this Further Notice of Proposed Rulemaking and no burdens imposed on small entities.

102. Section IV.B of the Further Notice of Proposed Rulemaking seeks comment on possible changes to the Commission’s pricing flexibility rules after it conducts the one-time, multi-faceted market analysis discussed in Section IV.A of the Further Notice of Proposed Rulemaking. Section IV.C seeks comment on the reasonableness of terms and conditions offered by incumbent LECs in the special access market. As SBA observed, changes in special access prices may have an impact on small carriers, including small competitive carriers. Once the data described in the Report and Order is collected and analyzed, we may modify the existing pricing flexibility rules or adopt a new set of rules that will apply to requests for special access pricing flexibility, and/or adopt remedies when we identify areas where market power exists, and determine whether a particular term or condition is unreasonable in a given area or that anticompetitive tying between competitive and non-competitive areas is occurring. Any such actions will accrue to the benefit of all carriers, including small competitive carriers, as it they will ensure the availability of special access services at just and reasonable rates.

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

103. None.

#### C. *Ex Parte* Presentations

104. The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation

consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### D. Comment Filing Procedures

105. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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.

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

107. For further information, contact Jamie Susskind in the Pricing Policy Division, Wireline Competition Bureau at (202) 418-1520.

### III. Ordering Clauses

108. *It is further ordered* that pursuant to sections 1, 4(i), 4(j), 5, 201-205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, 201, 202, 203, 204, 205, 211, 215, 218, 219, 303(r), 332, 403, 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, this Further Notice of Proposed Rulemaking, with all attachments, is *adopted*.

109. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking for sections IV.A and IV.C February 11, 2013 and for section IV.B on or before August 19, 2013, and reply comments for Sections IV.A and IV.C on or before March 12, 2013 and for section IV.B on or before September 30, 2013.

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

#### List of Subjects in 47 CFR Part 69

Communications common carriers; Reporting and recordkeeping requirements; Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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