

and safety, and other advantages; distributive impacts; and equity). HRSA believes that this proposed rule is not a significant regulatory action under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule simply updates an existing regulation to add further details to the description of certain situations that are covered by the FTCA, and because such coverage is provided for under Federal law, HRSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." HRSA does not expect this proposed rule to result in any one-year expenditure that would meet or exceed this amount.

#### Paperwork Reduction Act

This rule does not contain any new information collection or recordkeeping requirements that fall under the purview of the Paperwork Reduction Act of 1995. The recordkeeping requirements contained in this rule are part of normal business practice and do not require the collection of new information or impose additional requirements beyond current routine practice.

#### List of Subjects in 42 CFR Part 6

Emergency medical services, Health care, Health facilities, Tort claims.

Dated: May 27, 2010.

Mary Wakefield,

Administrator, Health Resources and Services Administration.

Approved: January 24, 2011.

Kathleen Sebelius,

Secretary.

For the reasons stated in the preamble, we are proposing to amend 42 CFR part 6 as follows:

#### PART 6—FEDERAL TORT CLAIMS ACT COVERAGE OF CERTAIN GRANTEES AND INDIVIDUALS

1. The authority citation for part 6 continues to read as follows:

**Authority:** Sections 215 and 224 of the Public Health Service Act, 42 U.S.C. 216 and 233.

2. In § 6.6, revise paragraph (e) to read as follows:

#### § 6.6 Covered acts and omissions.

\* \* \* \* \*

(e) For the specific activities described in this paragraph, when carried out by an entity that has been covered under paragraph (c) of this section, the Department has determined that coverage is provided under paragraph (d) of this section, without the need for specific application for a coverage determination under paragraph (d) of this section, if the activity or arrangement in question fits squarely within the examples of activities listed below; otherwise, the health center should seek a particularized determination of coverage under paragraph (d) of this section.

(1) *Community-Wide Interventions. (i) School-Based Clinics.* Health center staff provide primary and preventive health care services at a facility located in a school or on school grounds. The health center has a written affiliation agreement with the school.

(ii) *School-Linked Clinics.* Health center staff provide primary and preventive health care services, at a site not located on school grounds, to students of one or more schools. The health center has a written affiliation agreement with each school.

(iii) *Health Fairs.* Health center staff conduct an event to attract community members for purposes of performing health assessments. Such events may be held in the health center, outside on its grounds, or elsewhere in the community.

(iv) *Immunization Campaigns.* Health center staff conduct an event to immunize individuals against infectious illnesses. The event may be held at the health center, schools, or elsewhere in the community.

(v) *Migrant Camp Outreach.* Health center staff travel to a migrant farmworker residence camp to conduct intake screening to determine those in need of clinic services (which may mean health care is provided at the time of such intake activity or during subsequent clinic staff visits to the camp).

(vi) *Homeless Outreach.* Health center staff travel to a shelter for homeless persons, or a street location where homeless persons congregate, to conduct intake screening to determine those in need of clinic services (which may mean health care is provided at the time of such intake activity or during

subsequent clinic staff visits to that location).

(2) *Hospital-Related Activities.* Periodic hospital call or hospital emergency room coverage is required by the hospital as a condition for obtaining hospital admitting privileges. There must also be documentation for the particular health care provider that this coverage is a condition of employment at the health center.

(3) *Coverage-Related Activities.* As part of a health center's arrangement with local community providers for after-hours coverage of its patients, the health center's providers are required by their employment contract to provide periodic or occasional cross-coverage for patients of these providers.

(4) *Coverage in Certain Individual Emergencies.* A health center provider is providing or undertaking to provide covered services to a health center patient within the approved scope of project of the center, or to an individual who is not a patient of the health center under the conditions set forth in this rule, when the provider is then asked, called upon, or undertakes, at or near that location and as the result of a non-health center patient's emergency situation, to temporarily treat or assist in treating that non-health center patient. In addition to any other documentation required for the original services, the health center must have documentation (such as employee manual provisions, health center bylaws, or an employee contract) that the provision of individual emergency treatment, when the practitioner is already providing or undertaking to provide covered services, is a condition of employment at the health center.

[FR Doc. 2011-3439 Filed 2-25-11; 8:45 am]

BILLING CODE 4160-15-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 1, 20, and 43

[WCB: WC Docket Nos. 07-38, 09-190, 10-132, 11-10; FCC 11-14]

#### Modernizing the FCC Form 477 Data Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission considers whether and how to reform the Form 477 data program, which serves as the Commission's primary tool for collecting broadband and local telephone data. The Commission

believes it is time to consider whether modifying the Form 477 will improve the Commission's ability to carry out its duties under the Communications Act of 1934, as amended (the Act), and is an important part of the Commission's larger initiative to modernize and streamline how the Commission collects, uses, and disseminates data.

**DATES:** Comments are due on or before March 30, 2011, and reply comments are due on or before April 14, 2011. Written comments on the Paperwork Reduction Act proposed or modified information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 29, 2011.

**ADDRESSES:** You may submit comments, identified by WC Docket No.11-10, by any of the following methods:

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

- *Federal Communications Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

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

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at 202-395-5167.

**FOR FURTHER INFORMATION CONTACT:**

Jeremy Miller at (202) 418-1507, Wireline Competition Bureau, Industry Analysis and Technology Division. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith Boley Herman at 202-418-0214.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket Nos. 07-38, 09-190, 10-132 and 11-10, adopted and released on February 8, 2011. The complete text of this

document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpiweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

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: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

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

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

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

the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

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

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

*People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [fcc504@fcc.gov](mailto:fcc504@fcc.gov); phone: (202) 418-0530 or (202) 418-0432 (TTY).

In addition, one copy of each pleading must be sent to each of the following:

- The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554; Web site: <http://www.bcpiweb.com>; phone: 1-800-378-3160; and

- Jeremy Miller, Competition Policy Division, Industry Analysis and Technology Division, 445 12th Street, SW., Room 5-B145, Washington, DC 20554; e-mail: [Jeremy.Miller@fcc.gov](mailto:Jeremy.Miller@fcc.gov) or telephone number (202) 418-1507.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its Web site:

<http://www.bcpiweb.com>, by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (TTY), or by facsimile at (202) 488-5563.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

### **Initial Paperwork Reduction Act of 1995 Analysis**

This document proposes new or revised information collection requirements. The reporting requirements, if any, that might be adopted pursuant to this NPRM are too speculative at this time to request comment from the OMB or interested parties under section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Therefore, if the Commission determines that reporting is required, it will seek comment from the OMB and interested parties prior to any such requirements taking effect. Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection.

### **Synopsis of the Further Notice of Proposed Rulemaking**

#### **I. Introduction**

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on whether and how to reform the Form 477 data program to improve the Commission's ability to carry out its statutory duties, while streamlining and minimizing the overall costs of the program, including the burdens imposed on service providers. This NPRM is an important part of our larger Data Innovation Initiative to modernize and streamline how we collect, use, and

disseminate data, and to ensure that all of the data we collect is useful for supporting informed policymaking, promoting competition, and protecting consumers. We are focused on giving careful consideration to the benefits and burdens of our data collections, and eliminating unnecessary collections where possible. For example, the Initiative already has identified over twenty data collections across the entire Commission that may be outdated and ripe for elimination, as well as a number of statutory reporting obligations that may have outlived their usefulness. Similarly, for each type of data discussed in this NPRM, we will consider the burdens and benefits of any proposed changes. Our goal is to ensure that the Commission has the data it needs, while minimizing the overall burdens of data collection.

2. Established in 2000, Form 477 is the Commission's primary tool for collecting data about broadband and local telephone networks and services. The form requires providers of broadband service, local telephone service, interconnected Voice over Internet Protocol (VoIP) service, and mobile telephone service to report the number of subscribers they have in their respective service areas. But the Commission has in the past noted shortcomings of the data collected using Form 477, and after more than a decade of rapid innovation in the market for broadband and telephone services, and consistent with the Government Accountability Office's (GAO) recent finding that the Commission's broadband data collection fails to collect key data required to inform policy decisions and generally needs improvement, we believe it may be time to modify Form 477 to better serve the needs of the Commission, Congress, service providers, and consumers. In fact, since the last modification of Form 477, Congress directed the FCC to collect additional information to supplement its analysis of broadband deployment and availability. As we have noted before, Form 477 collects data that are "a critical precursor" to the Commission's ability to fulfill its statutory duties, and provides the Commission with "a set of data of uniform quality and reliability" superior to other publicly available information sources. Form 477 also enables us to fulfill our obligation to reduce government regulation wherever possible, by providing "a factual basis to evaluate the nature and impact of our existing regulation and, in particular, to identify areas where competition has

developed sufficiently to justify deregulation."

## **II. Background**

### **A. Form 477 Data Program**

3. *Development of FCC Form 477.* The Commission initiated the Form 477 data program in May 2000 to "materially improve its ability to develop, evaluate, and revise policy" for broadband and telephone services, and "to provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers." The Commission designed the program as a standardized collection, with separate sections on subscriptions to broadband services, local telephone service competition, and mobile telephony services.

4. In establishing the Form 477 framework for broadband data, the Commission anticipated that a "regular and consistent survey of broadband deployment" would substantially assist it in fulfilling its statutory duty under Section 706 of the Telecommunications Act to report to Congress on broadband deployment and availability, and to encourage the deployment of broadband to all Americans. To that end, the initial Form 477 collected broadband subscribership data. Specifically, the form collected data from facilities-based providers on the numbers of connections to the Internet in service to consumers in each State, and whether such connections used the provider's own facilities, unbundled network elements (UNEs), special-access lines or other leased lines, or wireless channels. The Commission established 200 kilobits per second (kbps) as the minimum transfer-speed threshold for the connections it would track, and required providers to identify the technology used to provide the connections, the percentage of connections offered to residential customers and small businesses, and each ZIP code in which the providers had at least one connection in service.

5. The initial Form 477 likewise collected subscribership data for local telephone service, including data from incumbent local exchange carriers (LECs) and competitive LECs on the number of voice-grade equivalent lines and fixed wireless channels in service for the provision of local exchange or exchange access service to end-user customers and for resale. The original Form 477 required LECs to report the five-digit ZIP codes in which customers served, by reported lines and wireless channels. Mobile telephony providers were required to report their total subscribers by State, and the percentage

of customers billed directly by the reporting provider.

6. The initial Form 477 program did not require small providers to file reports. Specifically, broadband service providers with fewer than 250 connections in service in a State were not required to file the form. LECs with fewer than 10,000 voice-grade equivalent lines or wireless channels in service, and mobile telephony providers with fewer than 10,000 subscribers were similarly not required to file.

7. *Revisions to Form 477.* The Commission has twice modified Form 477. First, in 2004, the Commission revised the Form 477 program to require submissions from all facilities-based providers of broadband connections, in order to capture a more comprehensive picture of broadband deployment in rural areas. Further, the Commission required filers to report the percentage of their connections that fell into five speed tiers. The Commission also required all wired and fixed wireless providers to report the technologies used to provide service in the ZIP codes in which at least one connection was in service. The Commission acknowledged that mobile broadband service differs in some respects from fixed broadband service, and required filers reporting mobile wireless broadband subscribers to list the ZIP codes that “best represent the filers’ mobile wireless broadband coverage areas.”

8. The Commission next refined the Form 477 data program in 2008, establishing the framework that is currently in place. The Commission decided to collect more granular subscription and speed data, and to improve the quality of data on mobile wireless broadband services. All wireline and terrestrial-fixed wireless broadband service providers must now report the numbers of subscribers at the census-tract level, broken down by technology and more disaggregated speed tiers; and the percentage of subscribers that are residential. Incumbent LECs must continue to report the percentage of their service areas where DSL connections are available to residential premises, and cable system operators must do the same with regard to cable modem service availability. Providers of terrestrial mobile wireless broadband services must continue to submit their broadband subscriber totals on a State-by-State basis, rather than at the census-tract level, and must report on the census tracts that “best represent” their broadband service footprint for each speed tier in which they offer service.

9. The 2008 Broadband Data Gathering Order and Further NPRM, 73

FR 37911, July 2, 2008, also required providers of interconnected VoIP services to report the number of subscribers in each State, the number of subscribers who purchase the service in conjunction with the purchase of a broadband connection and, of those, the types of connections purchased. Interconnected VoIP providers also must report the percentage of subscribers who can use the service over any broadband connection.

10. *2008 Further NPRM.* The Commission sought comment in 2008 on further revisions to Form 477, including whether and how to institute a national broadband availability mapping program. The Commission tentatively concluded that it “should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available.” The Commission sought comment on standardized collection formats; whether it should collect information on pricing and actual speeds of broadband services; how generally to maintain the confidentiality of broadband data; whether the Commission should conduct and publish periodic consumer surveys on broadband services; and whether it should require LECs and interconnected VoIP providers to report the number of subscribers in geographic units below the State level, either by ZIP code or census tract.

#### *B. Other Developments Relating to Data Collection*

11. Since the adoption of the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008, a number of legislative and regulatory developments have affected the obligations of the Commission and other government agencies to collect data related to telephone and broadband services.

##### 1. Broadband Data Improvement Act

12. On October 10, 2008, Congress enacted the Broadband Data Improvement Act (BDIA), expressly finding that “[i]mproving Federal data on the deployment and adoption of broadband service will assist in the development of broadband technology across all regions of the nation.” The BDIA imposed several new obligations on the Commission and other Federal agencies.

##### a. Revisions to Section 706 Reporting Requirements

13. The BDIA amended Section 706 of the Telecommunications Act of 1996 to improve the quality and quantity of data the Commission collects on the

deployment and adoption of broadband services. First, the BDIA requires the Commission to publish its Section 706 reports “annually” instead of “regularly,” as previously required. Second, the BDIA requires the Commission to compile “demographic information for unserved areas” as part of the annual Section 706 inquiry. Specifically, the BDIA requires that the Commission “compile a list of geographical areas not served by any provider of advanced telecommunications capability.” If Census Bureau data are available, the Commission must “determine, for each such unserved area—(1) The population; (2) the population density; and (3) the average per capita income.”

14. The BDIA also requires the Commission to perform an international comparison in its annual broadband deployment report conducted pursuant to Section 706 of the Telecommunications Act. Specifically, Section 1303 of Title 47 now requires the Commission to “include information comparing the extent of broadband service capability (including data transmission speeds and price for broadband service capability) in a total of 75 communities in at least 25 countries abroad for each of the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers.”

##### b. The GAO’s Report on Broadband Metrics and Standards

15. In addition, the BDIA required the GAO’s Comptroller General to conduct a study and issue a report on broadband metrics and standards by October 10, 2009. That report evaluated the “broadband metrics that may be used by industry and the Federal Government [including the Commission] to provide users with more accurate information about the cost and capability of their broadband connection[s], and to better compare the deployment and penetration of broadband in the United States with other countries.”

16. The GAO found that current measures of broadband performance “have limitations,” that “views were mixed on potential alternatives, and ongoing [broadband data collection] efforts need improvement.” Further, stakeholders reported to the GAO that the data collected by the FCC Form 477 “[do] not include information on availability, price, or actual delivered speeds, which limits the ability to make comparisons across the country and inform policy or investment decisions.”

##### 2. Recovery Act

17. In February 2009, Congress enacted the American Recovery and

Reinvestment Act (ARRA), which directed the Commission to develop a national broadband plan to ensure that all people of the United States have access to broadband. The ARRA also directed the National Telecommunications and Information Administration (NTIA) to develop and maintain a comprehensive nationwide and publicly available map of broadband service capability and availability.

#### a. National Broadband Plan

18. Section 6001(k) of the ARRA instructed the Commission to submit to Congress a national broadband plan that would analyze mechanisms for ensuring broadband access by all people of the United States, provide a detailed strategy for achieving affordability and maximum usage, and include a plan for use of broadband to advance national purposes such as education, health care, energy, and public safety. The resulting National Broadband Plan, published on March 16, 2010, noted the necessity for “continuous collection and analysis of detailed data on competitive behavior,” and stressed the need for the Commission to conduct “more thorough data collection to monitor and benchmark competitive behavior.” In particular, recommendation 4.2 of the Plan suggested that the Commission “revise Form 477 to collect data relevant to broadband availability, adoption and competition.”

#### b. NTIA’s Broadband Inventory Map

19. In order to comply with requirements under the BDIA and the ARRA, NTIA in July 2009 established a State Broadband Data and Development Grant Program (SBDD). Through this program, NTIA has awarded grants, funded through 2015, to certain State-designated entities to fund the collection of data from broadband providers. The data collected by NTIA as part of the SBDD program will help populate a national broadband inventory map, which will be made public in February of this year. In accordance with the ARRA, this map will allow consumers to determine broadband “availability” through a Web site that is “interactive and searchable.”

#### 3. The Commission’s Data Innovation Initiative

20. On June 29, 2010, the Commission launched the Data Innovation Initiative, designed to modernize and streamline how the Commission collects, uses, and disseminates data. As part of the Initiative, the Wireline Competition, Wireless Telecommunications, and Media Bureaus released public notices

seeking input on which existing data collections should be eliminated or improved, and which new ones should be added. Review of the resulting record, along with staff work in the three Bureaus, has identified over twenty data collections that may be outdated and ripe for elimination, as well as a number of statutory reporting obligations that may have outlived their usefulness. We will initiate proceedings to consider elimination of those data collections that are completely within our purview. Recognizing that data collection is essential to fulfill the Commission’s central statutory obligations, including advancing universal service, protecting consumers, promoting competition, and ensuring public safety, we also look forward to working with Congress to eliminate any outdated statutory reporting obligations that they choose to relieve us of.

#### 4. 2010 Biennial Review

21. The Commission also is conducting its 2010 biennial review of telecommunications regulations, pursuant to Section 11 of the Communications Act of 1934, as amended. This section requires the Commission (1) to review biennially its regulations “that apply to the operations or activities of any provider of telecommunications service,” and (2) to “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.” The Commission is directed to repeal or modify any regulations that it finds are no longer in the public interest.

#### III. Purposes for Which the Commission Must Obtain Data

22. The Commission must collect timely and reliable information to carry out its statutory duties. In the eleven years that have passed since the Commission established the Form 477 data program, commenters in a number of proceedings have suggested that the broadband and telephone subscription data we currently collect are insufficient to allow the Commission to fulfill its statutory responsibilities. Telecommunications markets are now in a period of transition to a world in which fixed and mobile broadband networks give consumers access to not only voice communications capability but a myriad of other applications and services. Commission data shows that there are now more than 274 million mobile telephony subscriptions in the United States, and interconnected VoIP subscriptions increased by more than 20% during 2009 while traditional

PSTN switched access lines decreased by 6%.

23. The National Broadband Plan recommended that the Commission closely observe this transition from legacy circuit-switched networks to all IP, broadband networks to ensure that legacy regulations and services do not impede the transition to a modern and efficient use of resources, that businesses can plan for and adjust to new standards, and, perhaps most importantly, that consumers do not lose access to statutorily required “adequate facilities at reasonable charges.” Commenters in the National Broadband Plan suggested that the Commission collect data, or seek comment on the need to collect data, on a variety of issues related to this transition, including public safety, service quality, customer satisfaction, and price. Below, we identify a number of important purposes for which the Commission and commenters have noted that we may require more robust data, and seek comment on the data needed to fulfill those purposes.

#### A. Ensuring Universal Service

24. Section 254 of the Act, which governs administration of universal service programs, requires the Commission to base its universal service policies on certain principles, including that “[q]uality services” be “available at just, reasonable, and affordable rates,” and that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services \* \* \* that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” A key goal set forth in the National Broadband Plan is to reform the Universal Service Fund (USF) to “accelerate the deployment of broadband to unserved areas,” and the Commission’s unanimously adopted Joint Statement on Broadband calls for the USF to be reformed “to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs.”

25. We seek comment on the data needed to ensure universal service. Numerous stakeholders have asserted that the Commission must collect deployment, price, and service quality data to effectively fulfill its obligations under Section 254 and to modernize the USF to focus on broadband. For example, Verizon has stated that the

Commission must have reliable data to identify areas that are truly unserved by broadband to implement USF reform. The National Broadband Plan noted that “[a]cross the four USF programs, there is a lack of adequate data to make critical policy decisions regarding how to better utilize funding to promote universal service objectives.” The Commission itself has noted the importance of having reliable data to measure the performance of the USF and to protect against waste, fraud, and abuse. Would data on deployment, price, service quality, and subscription be required to assess whether the performance goals proposed for the USF high-cost program and Connect America Fund in the NPRM released today are being achieved? Would voice and broadband pricing data be necessary to develop possible rate benchmarks for voice and/or broadband service in order to determine if services are “affordable” and “reasonably comparable to rates in urban areas”? Would determining whether particular areas of the country—including rural, insular, and high-cost areas—should be exempt from aspects of the USF reform program or afforded different treatment require deployment, subscription, price and service quality data?

#### *B. Ensuring Public Safety*

26. The Communications Act charges the Commission with ensuring that “wire and radio communications service with adequate facilities at reasonable charges” are available for the purpose of, inter alia, “promoting safety of life and property through the use of wire and radio communications.” Congress has further tasked the Commission with a key role in guaranteeing that Americans have access to emergency services via 911. The Commission must be able to monitor the performance of both legacy circuit-switched networks and broadband networks to ensure that consumers can access emergency services as service providers transition from one technology to the other. As noted in the National Broadband Plan, “[a] more reliable [broadband] network would also benefit homeland security, public safety, businesses and consumers, who are increasingly dependent on their broadband communications, including their mobile phones.”

27. We seek comment on what data the Commission needs to fulfill these goals. Would mobile service deployment data, for example, allow the Commission to identify areas where consumers lack access to 911 service, such as rural highways or remote worksites? Would service quality data

enable the Commission to identify networks that limit consumers’ access to emergency services as a result of excessive downtime? Could customer complaint data likewise serve as an indicator that networks are insufficiently reliable to ensure that consumers can depend on them in an emergency?

#### *C. Promoting Telephone and Broadband Competition*

28. Promoting competition is a core purpose of the Telecommunications Act of 1996, as amended, and as the National Broadband Plan noted, “[c]ompetition is crucial for promoting consumer welfare and spurring innovation and investment in broadband access networks,” and “provides consumers the benefits of choice, better service and lower prices.” Others have noted the importance of competition to consumer welfare. In addition, vibrant competition in a market can reduce or eliminate the need for regulation. For example, competition, properly demonstrated, can be the basis for forbearance from regulations under Section 10 of the Act. As the Commission previously has found in the context of its Section 10 analysis, “competition is the most effective means of ensuring that \* \* \* charges, practices, classifications, and regulations \* \* \* are just and reasonable, and not unjustly or unreasonably discriminatory.” The Commission also is required to annually present its findings regarding the state of competition in the mobile services marketplace pursuant to Congress’s instruction in Section 332(c)(1)(C) of the Act.

29. Despite the importance of assessing competition in order to fulfill the Commission’s statutory responsibilities, the Commission does not always have sufficient information about voice and broadband services sufficient to assess competition accurately. For example, the Commission has recognized that a lack of comprehensive data on telephone and broadband services has, in certain situations, compromised the rigor of its analysis in proceedings seeking the transfer of Title III licenses and Section 214 authorizations. Similarly, in a decision regarding whether to grant forbearance from network unbundling and other regulations pursuant to Section 10 of the Act, the Commission was unable to make a definitive finding regarding market share in the telephony market when the primary cable operator did not voluntarily file reliable data.

30. The National Broadband Plan also noted that statements from a number of

commenters—including officials from the Department of Justice and the Federal Trade Commission—demonstrate that “additional data are needed to more rigorously evaluate broadband competition.” The Plan concluded that to ensure that the right policies are put in place so that the broadband ecosystem benefits from meaningful competition as it evolves, it is “important to have an ongoing, data-driven evaluation of the state of competition.” The National Broadband Plan therefore recommended that the Commission “revise Form 477 to collect data relevant to broadband availability, adoption and competition.” Numerous commenters have made similar observations and recommendations.

31. It is important to note that although more robust deployment and subscription data may give the Commission a view of the potential for competition in an area, the National Broadband Plan and a number of commenters have explained that such data alone would not necessarily reveal the actual extent of competition or the level of benefit that consumers enjoy from any competition that exists, and that price and service quality data could fill these gaps. We seek comment on the need for price and service quality data as well as deployment and subscription data to satisfy relevant statutory goals.

#### *D. Promoting Broadband Deployment and Availability*

32. As discussed above, Section 706(b) of the Telecommunications Act of 1996, as amended, directs the Commission to annually “initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans” and “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” The Commission has noted that information about broadband deployment and availability throughout the nation is essential to fulfill its obligations under Section 706, including the requirement to compile information about demographic information for unserved areas.

33. We seek comment on whether the Commission has data sufficient to effectively fulfill this purpose. The Commission has observed that the data it has collected to date have allowed only limited assessments of broadband deployment and availability. For example, the Commission has used information about the existence of at least one subscriber in a ZIP code or census tract as a proxy for both deployment and availability. But the

Commission and commenters have noted that subscription data, particularly when collected above the household level, is an imperfect proxy for network deployment or capability. For example, deployment is overstated when households subscribe in one part of an area (such as a census tract) but service is not offered to households in other parts of the same area, while deployment is understated if no household in an area has chosen to subscribe to any service offering provided by a network, and capability is understated if no household has opted for the highest speed offering.

34. We also note that the Commission has long identified broadband availability as a broader concept than broadband deployment. A number of commenters have suggested that the Commission collect other types of data beyond the Form 477 subscribership data to fulfill its obligations under Section 706, including information on where infrastructure has been deployed, the price of broadband services, and service quality. Would the use of such data sources in conjunction with subscription data provide additional insights into broadband adoption in the United States? If infrastructure data were collected, how could the Commission ensure that sensitive information on critical infrastructure is appropriately shielded and protected?

#### *E. Other Statutory Obligations*

35. We seek comment on other statutory obligations and Commission efforts that may require the Commission to reform the 477 data program. In addition, we seek comment on whether the subscription data currently collected via Form 477 and the Commission's other data collection programs are sufficient for such obligations, or whether the Commission should collect additional types of data. Commenters who advocate the collection of additional data should explain how collecting specific types of data would result in concrete benefits for consumers, service providers, and other stakeholders, and explain whether the benefits would outweigh the burdens.

#### **IV. Revisions to the FCC Form 477 Data Program**

36. In the preceding section, we discussed specific statutory obligations of the Commission that, to be performed effectively, may require the collection of better data. We turn now to discussion of what specific data may be necessary to discharge these statutory responsibilities, and whether and (where relevant) how we should collect each type of data using Form 477. After

reviewing input from outside parties, we believe that there are five categories of data that may be necessary to meet the Congressional mandates described in the prior section: deployment, pricing, and service quality and customer satisfaction data, which provide measures of supply; subscription data, which provides a measure of consumer demand; and ownership and contact information, which serves multiple statutory purposes. While collecting other categories of data, such as the location of last- and middle-mile infrastructure, could prove useful to the Commission, Form 477 may not be the most appropriate tool for collecting such data. We seek comment on whether there are other types of data necessary for the Commission to complete its mandates that should be collected using Form 477.

37. We recognize that data collections place burdens—and potentially significant burdens—on those required to file, and we actively seek to balance the benefits of data collected against those burdens. We seek comment on whether each of the types of data noted below is necessary for the Commission to fulfill its statutory mandates. Those who suggest that the Commission does not need particular data should specify how the Commission can meet its obligations without such data. For data that the Commission should collect, we seek comment on whether the Commission should gather the data through an OMB-approved data collection or whether there are other sources. For example, are there commercial data sources that would allow the Commission to meet its obligations? Alternatively, would it be practical for Commission staff to collect data from public sources (*e.g.*, from service providers' Web sites)? Those advocating the use of commercial or publicly available data should discuss any limitations associated with such sources, the resources the Commission would need to devote to the collection method proposed (*e.g.*, direct costs, staff time), and the impact such a collection method would have on other Commission efforts. Where a data collection is necessary, we seek comment on ways that the Commission can minimize the burden for filers, for example, in the design of the collection or in tools the Commission can provide. Commenters who cite the burden of an OMB-approved collection should quantify the burden they expect and explain their quantification methodology. We seek comment on issues specific to reducing the burden of

each collection as they are discussed in the following sections.

#### *A. General Considerations*

##### 1. Streamlining Collection

38. To reduce production burdens, commenters urge the Commission to ensure that the FCC Form 477 collection process is as "streamlined as possible," and we agree that streamlining the process where appropriate must be a top priority for the Commission. For example, providers request that the Form 477 interface be redesigned to allow parties to file data on multiple States as a single file. We seek comment on these proposals, and on other steps the Commission can take to streamline the Form 477 data program.

39. Reporting entities already maintain subscriber databases that include address-level information; thus, providing subscribership information at the address level could simplify reporting. At the same time, collection of address-level deployment and availability information would allow the Commission to make policy decisions based on a more granular and accurate understanding of the marketplace. We note that some providers have explicitly requested that they be allowed to submit subscribership data at the address level to reduce their reporting burden. We seek comment whether it would be less burdensome for providers to submit address-level data with respect to the deployment and availability of services. We also seek comment on other ways that the Commission can ease the burden on small- and medium-sized providers.

40. In addition, we seek comment on the extent to which technological tools can reduce the burden of producing information. For example, the Commission now makes available a Census Block Conversions application programming interface (API) that returns a U.S. Census Bureau Census Block number given a passed latitude and longitude. The API also returns the State and county name associated with a block. Among other benefits, we expect that this API will assist providers in assigning subscribers to census-defined geographic areas. What other tools are available to reduce the burdens providers face in complying with our data reporting programs? Are there other tools that the Commission itself should develop?

##### 2. Use of Third-Party and Publicly Available Data

41. We seek comment on whether and how the Commission can obtain reliable data from third parties and publicly

available sources. The Commission in 2007 sought comment on the “availability of commercial sources of broadband deployment data or data-processing programs that could augment or otherwise add value to our use of Form 477 data, or reduce the associated costs and other burdens imposed on reporting providers.” The Commission declined to use any such sources in the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008. We note that the Commission currently relies on some third-party data that may be considered authoritative, and seek comment on what other data could be obtained by the Commission from third parties. We also seek comment on whether there are new sources of data that could serve Commission goals.

42. We note that there are limitations associated with third-party data sources. Commercial data sources rarely rely on a census of all data sources of a particular type and more often rely on sampling. The bias associated with sampling, or the use of proprietary methods to create or extrapolate from a sample, could limit the applicability of commercial data. Further, commercial data often include restrictions to data rights that could limit the Commission’s ability to publish underlying data or resulting analysis. We seek comment on these potential shortcomings of commercial data, whether there are ways to mitigate them, and the balance between these limitations and the burden that could be avoided by the use of commercial data. The Commission could also cull some information from public sources, such as company Web sites. We note that such data may be unreliable or insufficiently detailed, and seek comment on the extent to which the Commission can base policy on such data. To the extent commenters advocate for the use of commercial or third-party data for a specific collection, we ask that they quantify the resources the Commission would have to devote to procure or process those data. How should the Commission balance the costs of purchasing data or collecting data itself from public sources against the burdens that Form 477 data collection may impose on service providers?

### 3. Who Must Report

43. Four classes of entities currently file FCC Form 477: facilities-based providers of broadband connections to end user locations; providers of wired or fixed wireless local exchange telephone service; providers of interconnected VoIP service; and providers of mobile

telephony services. Some entities may fill out only certain portions of the form.

44. Some of the proposals identified below would have the Commission collect from all providers of voice and broadband services data that may have in the past been collected only from a subset of providers. For example, some of the service quality data some have suggested we should collect from all broadband providers formerly were collected only from price cap carriers. We seek comment on whether there are classes of providers that should be exempted from reporting elements of any proposed data collection. For example, small broadband providers may find it relatively more burdensome to comply with certain data reporting obligations than larger carriers. Any proposals to exempt certain providers should include the legal and policy grounds and the policy implications for such an exemption.

45. We also seek comment on whether additional classes of entities should be required to file FCC Form 477. For example, should we revise our definition of “interconnected VoIP” for the purposes of this collection to include services that permit users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network? Proposals to require additional classes of entities to file should discuss the Commission’s authority to do so.

### 4. Frequency of Reporting

46. The Commission previously has decided that it can best balance its need for timely information with its desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis. One commenter has asked the Commission to require quarterly collections “to keep pace with rapidly evolving Internet technology and allow regulators to plan and adjust policies.” Another commenter asks that the Commission synchronize the filing deadlines for FCC Form 477 with those for the NTIA’s SBDD. We seek comment on whether FCC Form 477 should be filed more or less frequently.

#### *B. Specific Categories of Data*

47. Commenters have identified five categories of data that may help the Commission more effectively carry out its statutory obligations: deployment, price, subscription, service quality and customer satisfaction, and ownership and contact information. We seek comment on whether and how the Commission should collect such data,

and the Commission’s authority to do so.

48. Those commenting on how to collect data should be as specific as possible. Establishing detailed data reporting requirements is an inherently difficult task. Particular elements of a dataset may be simple to describe conceptually, but difficult to specify as a practical matter. Conversely, a data element may be easily specified, but difficult to explain in plain language. To the extent commenters propose that we collect specific data elements, we ask that commenters both discuss the concept and provide an actual specification of each data element. To the extent particular proposals are offered, are there different data elements that might better achieve our goals, including minimizing production burdens on filers and processing burdens on the Commission?

### 1. Deployment

49. As discussed above, numerous stakeholders have urged the Commission to obtain data that would allow it to understand where providers have deployed networks capable of delivering a given service. We seek comment on whether deployment data are necessary to fulfill several of the purposes discussed above: ensuring universal service by tracking the expansion of broadband networks, identifying areas that lack access to fixed or mobile broadband and assisting the Commission in targeting support to areas that most need it; monitoring telephone and broadband competition by providing insight into the service areas of potential competitors regardless of the technology used; and promoting broadband deployment and availability by providing reliable information about broadband deployment nationwide. In this section, we seek comment on how the Commission might obtain deployment data for voice and broadband services.

#### *a. Voice Network Deployment*

##### *(i) Fixed*

50. The Commission currently does not collect data on fixed voice network deployment. And although the national telephone subscription rate has remained high over the last decade, a number of commenters have informed the Commission that residents in some areas of the country—particularly rural, insular, high-cost, and Tribal areas—do not have access to basic fixed telephone service. Other commenters assert that State carrier of last resort obligations are sufficient to ensure that fixed voice networks are ubiquitously deployed. We



seek comment on whether the Commission should collect fixed voice network deployment data. If such a collection is warranted, should it be limited to areas in which network deployment has historically been a concern, such as rural, insular, high-cost, and Tribal areas? What geographic area (e.g., census block or address-level) would be appropriate for reporting such data?

(ii) Mobile

51. The Commission currently licenses a dataset from a commercial source, American Roamer, for data on mobile network deployment. American Roamer provides coverage boundary maps for mobile voice and broadband networks based on information provided to them by mobile wireless network operators. The Commission previously has noted that analysis based on this data “likely overstates the coverage actually experienced by consumers, because American Roamer reports advertised coverage as reported to it by many mobile wireless service providers, each of which uses a different definition of coverage. The data do not expressly account for factors such as signal strength, bit rate, or in-building coverage, and they may convey a false sense of consistency across geographic areas and service providers. Nonetheless, the analysis is useful because it provides a quantitative baseline that can be compared across network types, technologies, and carriers, over time.”

52. We seek comment on whether it is appropriate to continue relying on American Roamer’s mobile telephony deployment data. Are alternative datasets available, and if so, how do they compare to the data available to and currently purchased by the Commission? Are such datasets available only as off-the-shelf products, or would it be possible to acquire datasets tailored to the Commission’s specifications? For such datasets, what are the likely costs, and how timely is the data? Should the Commission require carriers to submit mobile telephony deployment data, notwithstanding the availability of some data from third parties? If so, what data submissions should be required? Should the Commission collect data that are based on a standardized definition of coverage or a range of signal strengths that would reflect a likely consumer experience? We also seek comment on whether the Commission should collect data on the spectrum bands used for mobile voice network deployment in specific geographic areas, which would help the Commission to fulfill its

spectrum management responsibilities under Title III of the Act. How burdensome would the collection of mobile telephony deployment data be for providers? What are the benefits of obtaining such information?

b. Broadband Network Deployment

(i) SBDD Data

53. The national broadband inventory map under development by the NTIA is an important step toward collecting more robust data about broadband deployment and availability. The GAO’s report noted that stakeholders “generally agreed” that this national broadband map “would address some gaps and provide detailed data on availability, subscribership, and actual delivered speeds,” but there were concerns that the data collection mechanism used—which depends on voluntary reporting by providers to State entities whose methods may vary from State to State—could “result in inconsistent data and limit the effectiveness of the effort.”

54. Broadband deployment data collected via Form 477 could address these consistency concerns and provide an ongoing source of data at the conclusion of the SBDD program. Verizon, Sprint, T-Mobile, and NCTA suggest that the Commission consider the extent to which it is necessary to collect broadband deployment data through Form 477 once NTIA’s national broadband inventory map is online and the data become available to the Commission. We seek comment on this suggestion. On what data would the Commission rely at the conclusion of the SBDD program, and how would the Commission reliably analyze trends in broadband deployment if there are gaps in data collected by the SBDD program?

(ii) Data Collection by the Commission

55. We seek comment on a number of issues raised by commenters who recommend that the Commission collect data on broadband network deployment.

56. *Geographic Area.* Parties have proposed varying levels of geographic specificity the Commission should require when collecting deployment information. Currently, the Commission collects subscription data—which it uses as a proxy for deployment—for fixed broadband providers at the census tract level. In the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008, the Commission tentatively concluded that it should measure deployment on an address-by-address basis, which would provide the most granular and accurate information. A number of commenters in prior proceedings, particularly State

regulatory agencies, have expressed support for collection of broadband deployment data at the address level. These commenters note that address-by-address data would yield the most useful data for the Commission about where broadband is deployed. Some smaller providers also state that reporting at the subscriber address level would ease the burden of reporting. Other commenters, however, have suggested that reporting address-level deployment information would be unduly burdensome for providers, particularly for small- and medium-sized providers that do not maintain such data. We seek comment on the benefits and burdens of requiring address-level deployment data. In addition, we seek comment on how to account for areas where networks are deployed, but there are no homes or businesses with addresses (e.g., uninhabited highways with mobile network coverage). At least one State (California) already requires address-level reporting for the construction of its broadband map. We seek comment on this and similar State agency initiatives and request any empirical evidence of the burdens and impact of compliance.

57. Some commenters in prior proceedings have suggested that the Commission collect deployment data at the census block level. The California Public Utility Commission (PUC) notes that reporting by census block would yield an average of 22 households, whereas a census tract yields an average of 1,628 households. Census block-level reporting could provide a balance between being more granular than census tract-level reporting and avoiding any privacy issues associated with address-by-address reporting. Commenters have also noted that the utilization of a Census geography facilitates the application and analysis of Census demographic data, such as income, race, age, and household size and composition. We seek comment on whether the burdens imposed by collecting census block-level data are significantly greater than those associated with collecting census tract-level data. Would the burdens imposed by collecting census block-level data be substantially greater than requiring address-level reporting? Are there particular benefits to using census-block level reporting? What were the costs and benefits of initiatives that have used census block-level reporting? What alternative reporting methods could the Commission use to ease the burden on carriers that might find census block-level data to be unduly burdensome,

while still collecting comparable and useful data?

58. NTIA's broadband mapping effort sought deployment data for a smaller geographic area than a census block for census blocks larger than two square miles. We seek comment on the benefits and costs of this approach. What unit of measurement should the Commission utilize for larger census blocks if the Commission does not use address-by-address reporting?

59. *Speed.* The National Broadband Plan noted the importance of speed data to consumers and policymakers, and stakeholders generally acknowledge its usefulness. The Commission currently collects information about advertised broadband speeds in its Form 477 collection. The National Broadband Plan noted, however, that consumers and policymakers would benefit from data on actual speeds. The Commission has sought information about how best to measure actual broadband speeds. Recognizing the difficulty of measuring actual speeds, a number of stakeholders have nonetheless urged the Commission to require providers to report actual speeds. Some have suggested that the Commission require providers to report a statistical sampling of average speeds. Others have suggested requiring providers to report data contention ratios (the ratio of the potential maximum demand to the actual bandwidth available). Broadband providers and their industry associations have argued that actual speeds are affected by a wide variety of factors, many beyond the providers' control, and that measuring speed will be "almost impossible." We seek comment on whether the Commission should collect data on contention ratios or some other measure of network congestion. We further seek comment on whether the Commission should continue to collect data only on advertised speeds, or whether, for example, providers should provide information about actual speeds by geographic area, or speeds that extend beyond the access network (e.g., end-to-end speeds that reflect an end user's typical Internet performance). We also seek comment on how to best measure the actual speeds of services that can be provided over a network. The Commission has undertaken a program to measure such speeds directly for a sample of end users of fixed broadband, and is considering a similar program for mobile broadband. We seek comment on whether an approach like this one, a similar approach with more measurements, or some other method is appropriate. Comments on measurements of actual speed should

identify the part or parts of the network where speed should be measured. What starting and ending points are most relevant for consumers, providers, and the Commission?

60. The Commission currently collects speed data in eight tiers of advertised download speeds and nine tiers of advertised upload speeds, leading to 72 possible combinations. The SBDD established nine tiers of advertised download speeds and 11 tiers of advertised upload speeds, for 99 possible combinations. We seek comment on whether the FCC and NTIA should conform their speed tiers. Further, while there is value in having speed data broken out at a granular level, relevant speeds are likely to evolve over time, and having 72 or 99 speed-tier combinations may be unnecessarily complex. However, we note that there are benefits to maintaining some continuity in this area to enable tracking data on particular speed-tier combinations over time. Further, measuring the same speed tiers for both business and residential customers may not be appropriate, as they often have different needs for speed. When collecting speed data, should the Commission reduce the number of speed tiers reported by providers? Should we add a tier specifically tied to any speed benchmark that may be required to receive USF or Connect America Fund (CAF) funding? Should any future increase in that potential benchmark result in the addition of a speed tier for that new speed? An alternative approach would be to define tiers by pairs of upstream and downstream speeds. Such an approach would greatly reduce the number of tiers but would lock-in pairings of downstream and upstream speeds. We seek comment on these approaches, including comment on the number of speed tiers and breakpoints.

61. *Mobile Issues.* Mobile broadband presents additional challenges with respect to geography. We seek comment on whether a mobile service should be treated differently from a fixed service for reporting purposes. For mobile service, a billing address can provide a subscriber's home location but does not reflect the entire coverage area where a mobile broadband network is available; nor would a billing address necessarily be reflective of the primary usage area of the subscriber, particularly in the case of family plans and for businesses. As discussed above, American Roamer produces mobile voice and broadband coverage maps, which the Commission has used to estimate mobile broadband deployment at the census block level.

However, these coverage maps have certain drawbacks, including that the data do not account for factors such as signal strength variations. Should the Commission collect some measure of signal strength beyond a simple "signal/no signal" flag? For example, would a "good/better/best" measure for each geographic area be appropriate, or would reported advertised speeds accurately reflect the impact of signal strength? How should reporting account for the variability of signal strength and capacity in a network that includes mobile users? We seek comment on whether billing address, census blocks, or another geographic area should be used to collect data on mobile broadband network coverage areas, separate from the maps obtained from American Roamer. In addition, Sprint has stated it has maps that would allow for the identification of service availability at the street address level, and has suggested that the Commission request such data on a trial basis from providers that currently produce such maps. We seek comment on conducting such a trial.

62. One carrier argues that mobile wireless providers should not be required to report speed data because of the difficulty of measuring factors that can affect mobile data transfer rates. We seek comment on whether we should collect data on mobile connection speed, and whether fixed and mobile services should be treated differently when reporting speed data. In addition we seek comment on the extent to which data from the Commission's mobile broadband speed test could be meaningful in evaluating mobile data transfer rates.

63. *Spectrum Issues.* We seek comment throughout this NPRM on several issues concerning spectrum usage data, which would help the Commission to fulfill its spectrum management responsibilities under Title III of the Act. How can the Commission best collect such information? Possible methods include requiring providers to indicate the band, radio service code, or call sign used to provide service.

64. *Satellite Issues.* We seek comment on how best to collect deployment data about satellite-based services. At least one satellite provider has pointed out the near-ubiquity of satellite signals. Should the Commission exempt satellite broadband providers from reporting deployment information, or require only that satellite providers report areas where terrain or other impediments are likely to block line of sight to the satellite?

65. *Anchor Institutions.* Anchor institutions such as schools, libraries, or

hospitals often require broadband offerings with quality of service guarantees not required by at least some retail customers, and Section 254 of the Act places particular emphasis on educational providers, libraries, and health care providers for rural areas. We seek comment on whether to treat anchor institutions like other businesses or whether they should be treated as a different category for the purposes of measuring deployment.

## 2. Price

66. We seek comment on whether price data are necessary to fulfill several of the purposes discussed above, including ensuring universal service by determining whether rural consumers are paying affordable and reasonably comparable rates to those in urban areas; monitoring telephone and broadband competition (*e.g.*, in forbearance proceedings) by providing data regarding the effect, if any, of competition on pricing or by determining whether nominally competitive providers in fact have comparable offerings in the market; reporting a comparison of U.S. and international prices for broadband service capability; and promoting broadband deployment and availability.

67. The Commission previously has considered whether to use Form 477 to collect price information. In the 1999 First Section 706 Report, for example, the Commission sought suggestions on how to measure market demand through “indicia [such] as prices [and] willingness to pay.” In the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008, the Commission sought comment on whether to require providers to report the monthly price charged for stand-alone broadband service.

68. Some commenters have argued that broadband providers should not be required to submit price information because prices are competitive; bundled offerings, temporary discounts, different pricing plans, and other service attributes make comparing pricing complex; the production of pricing data is too burdensome; and requiring the production of price data would impose Title II burdens on broadband providers.

69. Others, however, have urged the Commission to require broadband and voice providers to report price information to assess competition, determine whether prices are reasonably comparable in different demographic areas, inform our USF distribution mechanism, and to assess why consumers may not be purchasing broadband where it is available. Such commenters have emphasized the need

for the Commission to collect the actual price of broadband services to, for example, allow consumers to compare service prices. Proposals on how to collect price data have varied widely, however, in substance and level of detail. For example, some State regulators have urged the Commission to collect price information for stand-alone and bundled services, and not to consider promotional prices or short term deals. Some have urged the Commission to collect a measure of “price per megabit per second.” Others have urged the Commission to collect “information from commercial carriers regarding their tier pricing, credit and deposit requirements across various communities.” Commenters also have proposed a variety of geographic areas for reporting price, and a variety of reporting periods.

70. We seek comment on the Commission’s legal authority to collect price data, whether we should use Form 477 to collect price data, and if so, how we should collect and analyze such data. We acknowledge that there are a number of challenges associated with any approach to collecting price information. We therefore seek detailed comment on the strengths and weaknesses of the approaches we describe below, and on other possible approaches.

71. Price data can be collected in many different ways. For example, the Commission could collect retail prices charged by providers for basic voice and broadband offerings. Given the complexity and variety of bundles and discounts, the Commission could instead define a basket of services and collect, or require providers to post publicly, the price of that basket. Alternatively, the Commission could collect information about all available prices and packages, or seek to determine effective prices that end users pay.

72. Another approach would be to have providers report the total revenue associated with all offerings (including voice, video (*i.e.*, pay television), and broadband Internet access services), and identify the attributes associated with that revenue, such as the types of services provided (*e.g.*, voice, video, and broadband) and key descriptors of those services (*e.g.*, basic video, extended video, very high speed Internet access). The Commission could then determine the average effective price for each attribute in a given area by performing statistical analysis on aggregate revenue and attribute data across areas large enough to generate a significant number of measurements. We seek comment on whether such an approach would yield

meaningful results for the purposes outlined above. We also seek comment on how this approach might be specified. For example, how many and what attributes would be needed to support a useful analysis? Given that resolving the price for more attributes will require more measurements of total revenue, how should the number and selection of attributes be balanced against the geographic size of the measurement, given that a sufficiently large sample size for a larger number of attributes will require more measurements and a larger geographic area? Should revenue be inclusive or exclusive of taxes and fees? Should revenue be reported separately for business and residential customers?

73. We note that the Commission has sought comment on the need for price data to set benchmarks in the context of our intercarrier compensation and universal service proceedings. Would any of these approaches provide data suitable for the establishment of such benchmarks, or are more appropriate data available from other sources?

74. If the Commission collects price data, over what geographic area should prices be collected? As discussed in Section V.C below, ECPA may limit the Commission’s ability to require providers to report price data from service providers at the household or address level. Should the Commission collect price data at the census block level? Could the Commission collect data using, for example, street segments as the collection geographic area? If so, would it need to guard against collecting single home street segments? How could it do so? What impact would different geographic-level collections have on the value of the data produced? Would collecting data at a more granular level that is consistent with the restrictions imposed by ECPA (*e.g.*, at the street-segment level) materially improve the quality of the analysis and justify the added complexity of the collection?

75. Were we to collect pricing data for mobile services, how should prices for mobile services be assigned to a geographic area? Assigning a fixed service subscriber to a single census block is a relatively simple process that providers currently use to provide subscribership data at the census-tract level. Assigning price data for mobile services to a geographic area, however, is less straightforward, particularly in light of the billing address issues related to mobile addressed above. Should providers of mobile services use the billing address as the customer’s location, and report data for that customer in the corresponding census

block? For those that suggest mobile services do not have any inherent location, how should the Commission evaluate substitution of fixed service by mobile? How should the Commission account for various types of pre-paid and family plans that are common in mobile services?

76. The impact of a given price will be very different for consumers, businesses, and anchor institutions. The impact of those prices could vary significantly within those groups as well. For example, schools and libraries may seek a broadband service similar to a community hospital, but may have less funding. Should the Commission specify narrower customer classes (*e.g.*, small, medium, and large business) when collecting price data? How would any such customer classes be defined?

### 3. Subscription

77. We seek comment on whether subscription data, which the Commission currently collects, are necessary to fulfill several of the purposes discussed above: monitoring telephone and broadband competition by providing a measure of competition's outcome; how many customers subscribe to different providers' services in each area; promoting broadband deployment and availability; ensuring public safety by providing a measure of what networks and providers are relied on by how many customers in each area; monitoring the effects of PSTN-to-IP conversion by providing insight into how many customers are reliant on each type of network technology in each area; and ensuring that affordable voice and broadband services are available to all Americans.

78. No commenter has asked the Commission to cease collecting subscription data for wireline services. Are there types of subscription data the Commission need not continue to collect? For example, should the Commission continue to require providers to report the percentage of their local exchange telephone service lines for which they are the presubscribed interstate long distance carrier or that are provided over UNE-Platform? One provider has urged the Commission to cease collecting subscription data from wireless service providers, and instead to "seek broadband and telephony data based on coverage areas" like those provided by American Roamer, because coverage areas more accurately indicate where mobile subscribers have access to wireless service than do subscriber billing addresses or area codes. We seek comment on this proposal. Would data collected by coverage area be sufficient

to achieve the outcomes discussed in Section III above?

#### a. Issues Applicable to Both Voice and Broadband Subscription

79. *Mobile issues.* Should the Commission modify its data collection practices with respect to mobile voice or mobile broadband subscribers? For example, if most providers treat each line, telephone number, or device as a separate subscription, to what extent does over-counting result from individuals owning or using more than one device? We also ask that providers comment on the way in which family plans are counted. Is one family plan a subscription, or is each line within the plan counted as a separate subscriber? In addition, certain challenges can arise in collecting data on prepaid subscribers, particularly subscribers to traditional pay-as-you-go prepaid plans. For instance, the address or location of such subscribers is typically unknown, and these subscribers may frequently stop using one device and start using another without the first device being counted as a disconnect. We seek comment on the best way to account for pre-paid plan subscribers given these challenges. In addition, should we collect data on the number of mobile voice and mobile broadband subscriptions by spectrum band, by customer class (*i.e.*, residential and business), and by technology? Should we require that mobile voice and mobile broadband providers distinguish which subscribers are voice-only, broadband-only, or both voice and broadband? How should we account for mobile data services for non-traditional devices, such as data-only e-readers, machine-to-machine communications, telemetry systems, and others? Are there other ways for the Commission to access this information? How would any proposed changes help us to produce our annual report on mobile wireless competition?

80. *Geographic Area.* Form 477 currently collects voice telephony subscription data at the State level and broadband subscription data at the census tract level. We seek comment on whether voice and broadband subscription data should be collected at the same level of geographic specificity. Are there differences in the need for such data that would justify continuing to use different levels of specificity? We also seek comment on whether the Commission should require entities to report deployment and subscription levels at the same level of geographic specificity.

81. As discussed above, commenters in prior proceedings have advocated more granular subscribership data for

broadband services. Commenters have also suggested that policymakers need more granular data about voice services, particularly in order to address competition issues. Should voice and broadband subscription data be reported at the address level, the census block level or some other level? Is it important for voice and broadband subscription data to be reported at the same geographic level, regardless of which one? As discussed below, the Electronic Communications Privacy Act may be implicated should the Commission collect address-level subscription data from service providers. However, some smaller providers have specifically requested that the Commission allow them to provide address-level data because that "would reduce reporting burdens on small businesses serving high-cost rural areas." Therefore, we seek comment on the propriety of allowing production of such data at the request of a provider, the benefits and drawbacks to having some, but not all subscribership data at that level of granularity, and whether such collections would violate ECPA.

82. Data on mobile wireless broadband subscribers are currently collected at the State level, while mobile broadband availability is reported at the census tract level. We seek comment on whether we should treat fixed and mobile services differently. How should we account for users of resold or prepaid mobile broadband services, where the address of the end user may be unknown?

83. *Residential and Business Subscription Breakdown.* Form 477 currently requires that providers report subscriptions separately for residential and business customers. We recognize that this distinction may be imprecise, particularly for mobile plans where lines used primarily for business may be paid for by an individual, or vice versa. We seek comment on whether there are better ways to distinguish residential and business customer classes, for data and voice services. For example, should we require providers to treat all fixed broadband connections with a service-level agreement as "business" and all those without one as "residential?"

#### b. Voice Subscription Data

84. To the extent the Commission continues to collect subscription data, we seek comment on whether we should modify the way in which we collect that data.

85. *Fixed.* Should the Commission modify its data collection practices with respect to fixed voice services? For example, should the Commission distinguish among services sold as

stand-alone offerings and services that are bundled with a subscription to broadband, video, or mobile services? The Commission currently collects data on the proportion of subscribers that have the filing carrier as their presubscribed interexchange carrier (PIC). Should the Commission collect information on what type of interexchange service plans these subscribers purchase (e.g., per minute, bundles of minutes, or unlimited local and long distance)?

86. Form 477 currently collects limited data on the extent of facilities-based competition for fixed voice services. Should the Commission distinguish among the types of loops provided under unbundled network element (UNE) arrangements? For example, should the Commission collect data on the number of DS0, DS1, and DS3 loops provided to unaffiliated telecommunications carriers under a UNE loop arrangement? The Commission does not currently collect information for voice services that are provided using special access or other high capacity services/facilities that have not been channelized. Should the Commission collect information on voice services provided in this manner?

87. *Interconnected VoIP*. Should the Commission modify its requirements concerning interconnected VoIP? For example, should the Commission distinguish among stand-alone, facilities-based interconnected VoIP; stand-alone over-the-top interconnected VoIP; and interconnected VoIP that is bundled with a broadband subscription? Should Form 477 distinguish “nomadic” from “fixed” interconnected VoIP (i.e., distinguish whether an interconnected VoIP service can be used from one or multiple fixed locations)? Should the Commission begin collecting data on VoIP services that do not meet the definition of interconnected VoIP (e.g., services that can make calls to or receive calls from the PSTN)?

#### c. Broadband Subscription Data

88. Currently, Form 477 collects data on broadband subscribership at 72 speed tiers for each census tract in the nation. As with deployment data, we seek comment on whether we should reduce the number of speed tiers at which providers report. Should the speed tiers used for deployment and subscription data be the same? Should providers of fixed and mobile broadband services provide the number of subscribers by technology? We also seek comment on whether wireless broadband providers should include information about the spectrum band(s) they use to provide service.

#### 4. Service Quality and Customer Satisfaction

89. We seek comment on whether service quality and customer satisfaction data are necessary to fulfill several of the purposes discussed above: reducing waste, fraud, and abuse and increasing accountability in our universal service programs by ensuring that recipients of government support provide services to their customers that are reliable and of comparable quality to those not provided with government support; ensuring public safety by ensuring that networks remain a reliable means of contacting public safety organizations; monitoring telephone and broadband competition by ensuring that service providers with overlapping footprints provide comparable levels of service; promoting broadband deployment and availability; protecting consumers by ensuring that end users have information about network performance; and tracking the effects of the conversion from PSTN to IP services by providing insight into the performance levels of both networks.

##### a. Issues Applicable to Both Voice and Broadband

90. *Who Should Report*. The Commission previously has collected voice service quality and customer satisfaction data from a small subset of the total number of carriers. We seek comment on whether and how such data should be collected from a larger universe of voice and broadband providers.

91. *What Data Should Be Collected*. If we do collect such data, we seek comment on what aspects of service quality and customer satisfaction are relevant to the purposes described above or otherwise identified by commenters. The Commission could collect, for example, data regarding the number of trouble reports or complaints that customers make regarding network performance or degradation; complaints regarding service provider customer care and billing; installation and repair intervals; and general customer satisfaction. The Commission has conducted surveys that include questions on customer satisfaction. To what extent could data from these surveys and others like it be used to address concerns about service quality, particularly with respect to individual carriers in particular geographic areas? In addition, the Commission could collect direct measures of network performance, such as network downtime and number of customers affected; call blocking; prevalence of

dropped calls; and speed, latency, and jitter.

92. To what extent should the Commission specify common metrics for voice and broadband services. For example, should the Commission collect data on gross churn as a measure of customer dissatisfaction? Should the Commission collect data from all providers on the number of complaints made to providers and to State public utility commissions? Should data for residential customers include the time interval for installation and service commitments, the percent of time those commitments are met, and the out-of-service repair interval? How could the Commission ensure that such metrics were comparable for all reporting entities?

93. *Geographic Area*. We seek comment on over what geographic areas would be appropriate to collect service quality and customer satisfaction data. Given the role States play in regulating some voice services, we seek comment on whether collecting data by provider by State is appropriate. However, some provider networks may cross State boundaries, suggesting that market- or carrier-level information would be more appropriate. It may also be the case that different aspects of the proposed service quality collection will be most meaningful when measured in different geographic areas (e.g., wireline voice by State; but cable information by system), which suggests that the collection should be made over a smaller geographic area to allow for different levels of aggregation. To the extent commenters suggest the Commission collect data, we ask that they specify the appropriate geographic area for these data, and the relative burden that reporting for different geographic areas might impose.

##### b. Voice

94. The Commission in 1990 established ARMIS Reports 43–05 and 43–06 in order to monitor whether the implementation of price caps would lead to carriers lowering service quality. In 2008, the Commission granted certain incumbent LECs conditional forbearance from “the current partial and uneven” collection of those reports. The Commission noted, however, “the possibility that service quality and customer satisfaction data \* \* \* might be useful to consumers to help them make informed choices in a competitive market, but only if available from the entire relevant industry,” and tentatively concluded that the Commission should collect this type of information from “facilities-based providers of broadband and/or telecommunications.” Some urge

the Commission to adopt this tentative conclusion, while others object, arguing that forbearance was justified and the metrics set forth in those reports are irrelevant and outdated.

95. CWA proposes that the Commission require all providers of voice telecommunications services to file all of the data previously submitted on ARMIS Reports 43-05 and 43-06, and to expand service quality measurements to include answer times for live representatives responding to customer inquiries. We note, however, that all parts of the ARMIS 43-05 and 43-06 collections may not be helpful to fulfillment of the policy objectives discussed in Section III. For example, the California PUC offers a more limited proposal, that the Commission collect data formerly reported on four of the six tables of ARMIS Report 43-05.

96. We seek comment on whether the Commission should use Form 477 to collect service quality and customer satisfaction data for voice networks. Should the Commission collect some or all of the service quality metrics formerly collected through ARMIS, or other measures of voice quality? Should we collect metrics from switched and interconnected VoIP providers, over both fixed and mobile networks? Are there other metrics for service quality and customer satisfaction that would be more appropriate and less burdensome for reporting entities? Should metrics vary depending on the technology over which service is provided?

### c. Broadband

97. Several commenters have suggested that the Commission collect service quality and customer service data from broadband providers. In contrast, most broadband providers that commented objected to adopting any service quality data requirements. We seek comment on whether Form 477 should be revised to collect service quality and customer satisfaction data from broadband providers, and the authority under which such a collection would be conducted.

98. The metrics set forth in ARMIS Reports 43-05 and 43-06 were not designed with broadband networks in mind, and therefore might not be the best tools for collecting relevant data. To the extent that the Commission decides to extend customer service measurement to broadband services, we seek comment on what metrics should be used to assess broadband network service quality and customer satisfaction. How would the Commission measure network downtime? Should downtime reports include specific locations of outages and

the number of customer-hours relating to the outage? Should the Commission collect packet loss, latency, and jitter data? How can it do so in a meaningful way; and over what geographic area would such a collection have meaning? Should the Commission collect data on mobile and fixed traffic volume and network congestion, and if so, how should those metrics be specified? Over what geographic area is such a collection meaningful, and what measure of traffic is most meaningful?

99. We note that the recently adopted Open Internet Order requires broadband providers to publicly disclose the network management practices and performance characteristics of their broadband Internet access services. Are these disclosures adequate to satisfy any need the Commission may have for service quality data? If Form 477 were used to collect information regarding network management practices or performance characteristics, would the benefits outweigh the burdens?

### 5. Ownership and Contact Information

100. We seek comment on whether ownership and contact information are necessary to fulfill one or more of the purposes discussed above, including reducing waste, fraud, and abuse and increasing accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient regardless of corporate structure; ensuring public safety by providing a means for Commission staff to contact network operations centers rapidly in the event of an emergency; and monitoring telephone and broadband competition by revealing whether service providers with overlapping service footprints are in fact under common ownership or control.

101. Currently, we permit Form 477 filers to consolidate data for multiple operations within a State on a single submission. We also permit filers to determine the organizational level at which they submit their filings. For example, a parent or holding company may file on behalf of its subsidiaries or the subsidiaries may file their own Form 477. This provides filers with significant flexibility in how they submit data on Form 477, but may not provide the Commission with a sufficiently detailed picture of the markets for which data are reported.

102. We seek comment on whether we should revise the Form 477 to collect additional ownership information and related data. Would additional ownership information help inform the Commission's overall understanding of

the broadband ecosystem? In particular, would additional or different ownership data help us understand the interrelationships among the data on services and thereby improve our ability to evaluate markets and report to the public? Given the importance of broadband competition, would the benefit to the Commission of understanding the relationships between companies that appear to be providing competitive services in a particular area outweigh any burden of producing such information?

103. We also seek comment on the most effective and least burdensome means of collecting additional ownership data. One option could be to require filers to report data such as that collected on FCC Form 602 for wireless carriers, which collects all of a filer's "disclosable interest holders." Would such an approach be necessary to enable us to evaluate ultimate ownership of, and common control among, filers, or would a more limited dataset be sufficient? Should we require the submission of data on any branding used in the marketing or provision of service? If we require the submission of additional ownership information, should we also collect other reporting identifiers the filers use in making submissions to the Commission, such as the Physical System ID (PSID) used by the Media Bureau for cable systems? These and other measures might allow the Commission more easily to evaluate the actual number of providers offering services in a given area and to report non-confidential information about carriers by the names by which most consumers know them. Are there ancillary data that would be helpful to include on consumer-facing resources, such as the national broadband inventory map? Would it be useful, for example, to make available a provider's Web site address and other non-confidential data? Should entities that file report their FCC Registration Number (FRN) and Universal Service Administrative Company Study Area Code (SAC)?

104. We also seek comment on revising Form 477 to collect contact information for use in emergency situations. The Commission maintains a voluntary reporting system, the Disaster Information Reporting System (DIRS) that facilitates contact with carriers in emergencies. The Commission also maintains a number of databases that include contact information for other purposes. There is, however, no structured, mandatory collection of contact information in place specifically for use in emergencies affecting telephone or broadband networks. As a

mandatory, recurring filing by providers of telephone and broadband service, Form 477 may be a particularly effective vehicle for collecting emergency-contacts data that are comprehensive and current, with a relatively small burden on filers. We seek comment on whether we should revise Form 477 to collect data of this type and, if so, what data would best facilitate emergency communications with providers. Would a telephone number and e-mail address for each provider's Network Operations Center or equivalent be sufficient? Would the current six-month cycle for filing Form 477 be frequent enough to ensure that information was current? Are there any additional steps the Commission should take to collect data of this type?

#### 6. Other Data

105. Stakeholders have periodically suggested that the Commission collect other types of data via Form 477. MMTC, for example, suggests that the Commission collect via Form 477 "socioeconomic data," "social metrics," data to assess socially and economically disadvantaged businesses and minority or woman-owned business entities, and data on hardware and software availability in underserved areas. What other data should the Commission collect via Form 477 in support of the purposes identified in Section III above? Commenters should explain the purpose for which the Commission would collect such data, the legal authority for the collection, and the extent to which the benefits outweigh the burdens of collecting it.

106. We also note that there are some alternate geographic areas relevant to Commission analysis that cannot be recreated by aggregating even the smallest census geographies. Such alternate areas include, for example, wire centers or study areas. Information about what alternate areas are associated with each reported geography (*i.e.*, the geography reported with one or more of the possible collections described above) would assist in any analysis related to those areas. We seek comment on the burden to provide information about these alternate geographic areas on those reporting data.

### V. Legal Issues

#### A. Authority

107. The Commission has previously noted it must collect data on the provision of voice and broadband services to fulfill numerous statutory obligations. For example, the Telecommunications Act of 1996 required the Commission to open all

telecommunications markets to competition, and to assess the availability of broadband services. The Form 477 program collects data that are "a critical precursor" to the Commission's ability to fulfill these directives. Form 477 also enables us to fulfill our obligation to reduce government regulation wherever possible, by providing "a factual basis to evaluate the nature and impact of our existing regulation and, in particular, to identify areas where competition has developed sufficiently to justify deregulation." Many other statutory obligations cannot be implemented without the collection of data about the deployment and adoption of communications technologies and the state of relevant marketplaces. For example, the BDIA requires the Commission to collect comparative data reflecting the extent of broadband service capability in other countries, and data for the United States, to inform its annual consideration of whether broadband is being deployed to all Americans on a reasonable and timely basis. We believe our authority to collect the proposed additional data derives from these statutory obligations, as well as additional grants of authority in the Act, including those in Sections 4(i), 4(k), 218 and 403. We invite comment on this conclusion.

#### B. Disclosure

108. The Commission has always recognized that the Form 477 broadband and local telephone service data it collects can be of significant value not only to the Commission, but also to the States and to the public. In establishing and administering the Form 477 collection, however, the Commission has also been cognizant of the potential sensitivity of the data collected and has limited their disclosure.

109. We note that the Commission is reviewing its data dissemination practices in connection with the Data Innovation Initiative. How can we best provide stakeholders with useful data while protecting filers' legitimate confidentiality interests? Should the Commission retain the simple check box on the FCC Form 477 that filers can use to request confidential treatment for all data submitted on that form? Are there classes of information that should always be considered public, and, therefore, not be granted confidential treatment? For example, given that SBDD data will be public, are there any reasons to accord confidential treatment to deployment data collected by the Commission? Are there circumstances where data submitted to the Commission should be held

confidential, but aggregations of those data be made public, as is currently the case with subscription information? Once deemed confidential, should data always be confidential, or does the passage of time diminish the commercial sensitivity of certain types of data? When data are given confidential treatment, should the Commission establish a program to allow researchers access to those data under certain conditions? How would such a program be administered?

#### C. Privacy

110. We seek comment on any privacy concerns that may arise from the reporting of address-level data. We note that the privacy-based limitations on the government's access to customer information in Title II of ECPA, and the privacy provisions of the Cable Act, may be implicated by collection of address-level subscribership data. We therefore seek comment on ways the Commission could alleviate any privacy concerns while complying with all applicable laws.

111. We also seek comment on whether the Commission could establish a registry or database through which consumers could themselves share data with the Commission or choose to have their providers share data with the Commission. What would be the benefits and drawbacks of such a registry, and how could it be set up both to get useful data and to minimize the burden on consumers and reporting entities? Should consumers provide information directly to the Commission, or through reporting entities that must gain consumer consent? If the latter, what steps could the Commission take to ensure that consumers have provided consent? How could the Commission address any other privacy issues, and any other legal impediments to the creation and maintenance of such a registry?

112. We note that the presence or absence of a network at a particular address does not provide any subscriber-specific information. We seek comment, however, on whether any privacy concerns would arise if providers were required to report deployment data at the address level.

### VI. Other Issues

#### A. Tribal Lands

113. The National Broadband Plan identifies the importance of improving data on Tribal lands, and recommends that the Commission "identify methods for collecting and reporting broadband information that is specific to Tribal lands, working with Tribes to ensure

that any information collected is accurate and useful." The Commission's rules identify Federally recognized Tribal lands and define them for particular purposes, such as the eligibility and delivery requirements for universal service support programs. The Commission's definition of Tribal lands identifies the boundaries of land holdings of Federally recognized American Indian Tribal and Alaska Native Village government entities. We acknowledge that American Indian and Alaska Native areas defined as "Native Home Lands" by the U.S. Census Bureau for census taking purposes encompass areas both within and beyond areas defined as Tribal Lands in the Commission's rules. Tribal leaders have asked that we consider disaggregating our analysis of the Census Bureau's "Native Home Land" areas, in part to allow for a more accurate assessment of broadband deployment in the Tribal Lands areas defined under the Commission's rules. In the Seventh Broadband Deployment NOI, we sought comment on how to more accurately report data concerning the lands of Federally recognized American Indians Tribes and Alaska Native Villages, as well as Native Hawaiian Home Lands. Native Hawaiian Home Lands may also be able to be more accurately analyzed, as they are located exclusively within the State of Hawaii.

114. We seek comment on our analysis of broadband deployment and availability on Federally recognized Tribal lands and how we could improve and refine this analysis. We also seek comment on analysis of broadband deployment and availability on Native Hawaiian Home Lands. We note that sources of such data may presently exist within the U.S. Department of Commerce, U.S. Department of the Interior, and from Tribal Government entities. We seek comment on whether there are other sources of data that would help the Commission better understand and analyze the nature of broadband deployment and availability on Tribal Lands and Native Hawaiian Home Lands.

#### *B. International Data*

115. As discussed above, the BDIA requires the Commission to include an international comparison in its annual broadband deployment report. The International Bureau has released its first International Broadband Data Report, which presented data and information on international broadband service capability, advertised prices or broadband services, community-level data, and information about the

broadband market and broadband regulations in various nations.

116. To conduct a rigorous comparison of the factors that affect broadband deployment in the U.S. and abroad, it is necessary to have comparable, detailed, and geographically disaggregated data. We therefore seek comment on how and whether revisions to the Form 477 program would facilitate comparing the U.S. broadband market to other countries. To what extent would revisions facilitate comparisons between the U.S. and other countries on the basis of a population's income (and variations in income), education (and variations in education), computer literacy, residential computer ownership, household size, and other factors? Should the Form 477 program be modified to collect data on the costs of deploying broadband, including as a function of population density at a geographically disaggregated level? Should the program be modified to collect data on alternative broadband technologies more prevalent in other countries? Should the program allow for or enable an assessment of the number of providers that offer alternative forms of broadband and the advertised and actual speeds that providers offer in local geographic areas? Are there modifications to the subscription data we currently collect that would make those data more suitable for international comparisons? Where U.S. providers offer multiple service packages, should the Commission collect data about the speeds and other service characteristics of these packages? Would information on actual data usage be useful, as well as data on the applications that residential consumers use, such as VoIP services? Finally, would the collection of pricing data facilitate comparisons with offerings in other countries?

### **VII. Procedural Matters**

#### *A. Ex Parte Presentations*

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

#### *B. Comment Filing Procedures*

118. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments regarding the NPRM on or before the dates indicated on the first page of this document. All filings should refer to WC Docket No. 10–191. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's e-Rulemaking Portal; or (3) by filing paper copies.

119. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs/> or the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

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

121. 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.

122. Effective December 28, 2009, 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. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

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

124. For further information about this rulemaking proceeding, please contact Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418–0940.

125. Documents in WC Docket No. 11–10 will be available for public



inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

### VIII. Ordering Clauses

126. Accordingly, *it is ordered* that, pursuant to Sections 1-5, 10, 11, 201-205, 211, 214, 215, 218-220, 251-271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151-155, 161, 201-205, 211, 214, 215, 218-220, 251-271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and Section 102 of the Broadband Data Improvement Act, 47 U.S.C. 1303, this Notice, with all attachments, *is adopted*.

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

#### Initial Regulatory Flexibility Analysis

128. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities under the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

129. In the Notice of Proposed Rulemaking, the Commission considers whether and how to reform the Form 477 data program, which serves as the Commission's primary tool for collecting broadband and local telephone data. After more than a decade of rapid innovation in the market for broadband and telephone

services, the Commission believes it is time to consider whether modifying Form 477 will better serve the current and future needs of the Commission, Congress, consumers, and other stakeholders. Such reform seeks to improve the Commission's ability to carry out its duties under the Communications Act of 1934, as amended (the Act), and is an important part of the Commission's larger initiative to modernize and streamline how the Commission collects, uses, and disseminates data. Specifically, the Commission seeks comment on five categories of data that may be necessary to collect: (1) Deployment, (2) subscription, (3) price, (4) service quality, and (5) ownership and contact information. The Commission also seeks comment on whether there are other types of data necessary for the Commission to complete its mandates.

130. For these categories of data, the Commission identifies the purposes for which data may be needed, and seeks comment on the specifics of certain approaches to collecting data. For example, the Commission seeks comment on whether the Commission should use Form 477 to collect price data, which could help accomplish several purposes, including modernizing the universal service program to support broadband.

131. In addition, the Commission also seeks comment on whether service quality and customer satisfaction data may be necessary for several purposes, including increasing accountability in the Commission's universal service programs, ensuring public safety, promoting broadband deployment, and protecting consumers. The Commission then identifies certain metrics that could be collected, such as data regarding the number of trouble reports that customers make regarding network performance, and seeks comment.

132. The Commission also seeks comment on collecting ownership and contact information in order to reduce waste, fraud, and abuse in universal service programs and for other purposes.

133. The Commission also seeks comment on the extent to which technological tools and use of commercial and publicly available data can reduce the burden of producing information. The Commission also seeks comment on how to streamline the process in collecting the data it needs to inform its policymaking processes while minimizing the production burden on providers and the processing burden on the Commission.

#### B. Legal Basis

134. The legal basis for any action that may be taken pursuant to the Notice of Proposed Rulemaking is contained in Sections 1-5, 10, 11, 201-205, 211, 214, 215, 218-220, 251-271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151-155, 161, 201-205, 211, 214, 215, 218-220, 251-271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and Section 102 of the Broadband Data Improvement Act, 47 U.S.C. 1303.

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

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

##### 1. Wireline Providers

136. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. 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 NPRM. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.

137. *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. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. 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 NPRM.

138. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data

for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. 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 NPRM.

139. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Under that size standard, such a business is small if it has 1,500 or fewer employees. A Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

140. *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. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category

and the associated small business size standard, the majority of these local resellers can be considered small entities. 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 Notice.

141. *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. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. 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 our action.

142. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers

are small entities that may be affected by our action.

143. *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. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. 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 Notice.

144. *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. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, 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, at of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does 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, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 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.

## 2. Wireless Carriers and Service Providers

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

146. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed 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 the category of Wireless Telecommunications Carriers (except Satellite), 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. 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.

147. *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 commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

148. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), 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 2007 census also contains data for the specific category of "Paging" "that is classified under the seven-number NAICs code 5172101. 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 2 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. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average

gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

149. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the 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. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. Therefore, approximately half of these entities can be considered small. 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.

150. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard 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 small business size standards, 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 claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

151. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. 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. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

152. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered

small business size standard in the Narrowband PCS Second Report and Order. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.

153. *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, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). 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.

154. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission 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.

155. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* 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.

156. 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.

157. 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.

158. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards 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 in this service 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. SBA approval of these definitions is not required. An auction of 52 Major Economic Area 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.

159. *Air-Ground Radiotelephone Service.* The Commission has previously used 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 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning

Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

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

161. *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. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Additionally, the Commission notes that most applicants for recreational licenses

in this category of wireless service 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, the Commission estimates 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.

162. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA’s definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons is considered small. For the category of Wireless Telecommunications Carriers (except Satellite), 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 number of firms does not necessarily track the number of licensees. The Commission

estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

163. *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 standard. 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.

164. *32.39 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 our action.

165. *Wireless Cable Systems, 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. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (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) will 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) will 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) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

166. 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." For these services, 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 supersedes data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications "firms" does not track the number of "licenses."

167. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years. These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

168. *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, the Commission 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.

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

170. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small

business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

### 3. Satellite Service Providers

171. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts.

172. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing 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." Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that 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, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

173. The second category, *i.e.* "All Other Telecommunications" comprises "establishments 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, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small

entities that might be affected by our action.

#### 4. Cable and OVS Operators

174. Because Section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

175. *Cable and Other Program Distributors.* 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. 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 such firms can be considered small.

176. *Cable Companies and Systems.* The Commission has also 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 under 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.

177. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or

through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that 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.

178. *Open Video Services.* Open Video Service (OVS) systems provide subscription 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. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. 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, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

#### 5. Electric Power Generation, Transmission and Distribution

179. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." The SBA has developed a small business size standard for firms in this category: "A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours." According to Census Bureau data for 2007, there were 1,525 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,525 or fewer firms may be considered small under the SBA small business size standard.



## 6. Internet Service Providers, Web Portals and Other Information Services

180. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services.

181. Internet Service Providers. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled "broadband." The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of \$25 million or less. These are labeled non-broadband.

182. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees. For the second category, the data show that 1,682 firms operated for the entire year. Of those, 1,675 had annual receipts below \$25 million per year, and an additional two had receipts of between \$25 million and \$49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

183. Internet Publishing and Broadcasting and Web Search Portals. This industry comprises establishments 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 publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users. The SBA has

developed a small business size standard for this category; that size standard is 500 employees. Less than 500 employees is considered small. According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with 500 to 999 employees. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

184. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as Web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry 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, 6,726 had annual receipts of under \$25 million, and 155 had receipts between \$25 million and \$49,999,999 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

185. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, 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 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.

## *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

186. In the Notice, the Commission proposes additional or modified information collections that would impose further reporting and recordkeeping requirements on current Form 477 filers, including small entities. Specifically, the NPRM invites comment on whether and how the Commission could collect data on the following additional or modified categories of data: (1) Deployment, (2) subscription, (3) price, (4) service quality, and (5) ownership and contact information. The Commission also seeks comment on whether to collect "other data" such as socioeconomic and social metrics data to assess socially and economically disadvantaged parties. The Commission seeks further comment on the extent to which technological tools and use of commercial and publicly available data can reduce the burden of producing information. The Commission also seeks comment on how to streamline the process in collecting the data the Commission needs to inform its policymaking processes while minimizing the production burden on providers and the processing burden on the Commission. The Commission invites comments on the merits and methodologies of such data collections to include suggestions and discussions of other alternatives not specifically discussed in the NPRM that would meet the objectives of the NPRM but would impose lesser burdens on smaller entities.

187. Based on these questions, the Commission anticipates that a record will be developed concerning actual burden and alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband deployment and availability throughout the nation.

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

188. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the

use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

189. In particular, the Commission seeks comment on whether it would be less burdensome for providers to submit address-level data with respect to the deployment and availability of services. The Commission also seeks comment on other ways that the Commission can ease the burden on small- and medium-sized providers.

190. Based on these questions, and the alternatives the Commission has discussed, the Commission anticipates that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband. The Commission welcomes proposals of alternatives from any of the approaches as described in Section A, supra.

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

191. None.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 110201085-1087-01]

**RIN 0648-XY55**

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2011 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** As part of the process for the NMFS Northeast Regional Administrator approval of proposed sector operations established under Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), sectors are required to submit operations plans and sector contracts,

and request an allocation of stocks regulated under the FMP for each fishing year (FY). This action is to provide interested parties an opportunity to comment on 19 FY 2011 proposed sector operations plans and contracts. Although NMFS received 22 proposed sector operations plans and contracts for approval, only 19 of the 22 sector operations plans and contracts are being considered for approval because 3 sectors, the Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector, were unable to fulfill the roster requirements, and, therefore, were excluded from consideration.

**DATES:** Written comments must be received on or before March 15, 2011.

**ADDRESSES:** You may submit comments, identified by 0648-XY55, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- *Fax:* (978) 281-9135, Attn: Allison Murphy.
- *Mail:* Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2011 Sector Operations Plans and Contracts."

*Instructions:* All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the sector operations plans and contracts and the environmental assessment (EA) are available at <http://www.regulations.gov> and from the NMFS NE Regional Office at the mailing address specified above. An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule and is comprised of the EA, and the preamble and the Classification sections of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Allison Murphy, Sector Policy Analyst,

phone (978) 281-9122, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** NMFS announces that the Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that 19 sector operations plans and contracts, which were initially submitted to NMFS on or before September 1, 2010, and sector rosters, submitted on or before September 10, 2010, are: (1) Consistent with the goals of the FMP, as described in Amendment 16 Final Environmental Impact Statement (FEIS) and other applicable laws, (2) in compliance with the measures that govern the development and operation of a sector as specified in Section 4.2.3 of the Amendment 16 FEIS, and (3) have met administrative deadlines, including roster deadlines, for being proposed as a sector operations plan for FY 2011. This proposed rule summarizes many of the sector requirements as implemented by Amendment 16 and the requirements proposed for modification in Framework Adjustment 45 (FW 45), and solicits comments on the regulatory exemptions requested by sectors as well as the applicable environmental analyses.

As stated in Amendment 16, the deadline to submit operations plans and signed contracts was September 1, 2010. However, because NE multispecies permit holders were notified of their preliminary FY 2011 Potential Sector Contribution (PSC) in mid-August, 2010, NMFS extended the deadline to submit signed contracts from September 1, 2010, to September 10, 2010, to allow vessel owners adequate time to make a decision to join a sector for FY 2011 or to fish in the common pool. Based upon industry request, this deadline was further extended to December 1, 2010, to provide additional flexibility.

**Background**

The final rule implementing Amendment 13 to the NE Multispecies FMP (69 FR 22906; April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, sector operations plans and contracts must contain certain elements, including a contract signed by all sector participants and an operations plan containing rules that sector members agree to abide by to avoid exceeding their sector TAC. An EA, or other appropriate analysis, must be prepared for the sectors that analyzes