

this area that obviate or mitigate the need for a separate grant condition?

(10) Does the current language in the AmeriCorps grant provisions appropriately define the scope of the requirement and documentation of compliance?

(11) What safeguards are necessary to protect the privacy of program participants or staff?

(12) What are the best practices to monitor and enforce compliance with requirements relating to the screening of participants?

(13) Where grantees are involved in a variety of programmatic activities, as in the case of RSVP, how should the Corporation identify those programs where volunteers and staff have access to children or other vulnerable individuals on a recurring basis?

(14) To what extent do state and local laws constrain the Corporation from requiring grantees to conduct criminal background checks on national service participants or employees, who, on a recurring basis, have access to children or other vulnerable populations?

(15) How often should a criminal background check be conducted for a national service participant who serves for two or more years?

(16) Are there categories of grantees (e.g. local school districts) for whom a separate Corporation requirement for criminal background checks might not be necessary because the grantee is already independently required to have appropriate applicant screening safeguards in place?

For more information on the Corporation, please visit our Web site at: <http://www.nationalservice.gov>.

### Conference Calls and Public Input

The Corporation is planning two conference calls in October, 2005. The first will be conducted on October 21, 2005, at 3 p.m., e.s.t. and the second on October 28, 2005, also at 3 p.m. e.s.t.

The USA Toll Free Number is 1-888-790-1769. The passcode is 7282715. Each conference call will last approximately 1 hour. Please check our Web site at [http://www.nationalservice.gov/about/newsroom/releases\\_detail.asp?tbl\\_pr\\_id=196](http://www.nationalservice.gov/about/newsroom/releases_detail.asp?tbl_pr_id=196) for additional or updated information regarding these conference calls, or contact Tom Bryant at [tbryant@cns.gov](mailto:tbryant@cns.gov).

Dated: October 11, 2005.

**Frank R. Trinity,**  
General Counsel.

[FR Doc. 05-20652 Filed 10-14-05; 8:45 am]

BILLING CODE 6050--\$S-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 63 and 64

[WC Docket No. 05-271; FCC 05-150]

### Consumer Protection in the Broadband Era

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Communications Commission (Commission) initiates this rulemaking to explore whether regulations we would adopt pursuant to the Commission's ancillary jurisdiction under Title I of the Communications Act (Act) should apply to broadband Internet access service, regardless of the underlying technology providers use to offer the service. The rulemaking seeks comment on whether the imposition of regulations in the areas of consumer privacy, unauthorized changes to service, truth-in-billing, network outage reporting, discontinuance of service, rate averaging requirements, and the corresponding ability of consumers to take advantage of Commission avenues for resolution of these consumer protection issues, is desirable and necessary as a matter of public policy, or whether we should rely on market forces to address some or all of the areas listed. The rulemaking also explores whether there are other areas of consumer protection not listed above for which the Commission should impose regulations. Overall, this rulemaking will determine whether any non-economic regulatory requirements are necessary to ensure that consumer protection needs are met by all providers of broadband Internet access service.

**DATES:** Comments are due on or before January 17, 2006, and reply comments are due on or before March 1, 2006.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 05-271, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.fcc.gov>. Follow the instructions for submitting comments on <http://www.fcc.gov/cgb/ecfs/>.
- E-mail: [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.
- Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- Hand Delivery/Courier: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs/>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.fcc.gov/cgb/ecfs/>.

**FOR FURTHER INFORMATION CONTACT:** William Kehoe, Senior Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1580.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 05-271, FCC 05-150, adopted August 5, 2005, and released September 23, 2005. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at [www.bcpweb.com](http://www.bcpweb.com). It is also available on the Commission's Web site at <http://www.fcc.gov>.

### Public Participation

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, filers must transmit one electronic copy of the comments for the docket 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.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [janice.myles@fcc.gov](mailto:janice.myles@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

### Synopsis of the Further Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on the need for any non-economic regulatory requirements necessary to ensure consumer protection needs are met by all providers of broadband Internet access service, regardless of underlying technology. This includes, but is not limited to, facilities-based providers of wireline broadband Internet access service. We conclude, in the Report and Order accompanying the NPRM, that wireline broadband Internet access service is an information service under the Act.

2. Consumers' privacy needs are no less important when consumers communicate over and use broadband Internet access than when they rely on telecommunications services. For example, a consumer may have questions about whether a broadband Internet access service provider will treat his or her account and usage information as confidential, or whether the provider reserves the right to use account information for marketing and other purposes. Section 222 of the Act establishes the regulatory framework governing telecommunications carriers' use and disclosure of CPNI and other customer information obtained by those carriers in their "provision of a telecommunications service." That section requires, in general, that telecommunications carriers use or disclose CPNI only in the provision of the telecommunications service from which the CPNI is derived, or in the provision of services necessary to, or used in, the provision of such telecommunications services.

3. We seek comment on whether we should extend privacy requirements similar to the Act's CPNI requirements to providers of broadband Internet access services. For example, should we adopt rules under our Title I authority that forbid broadband Internet access providers from disclosing, without their customers' approval, information about their customers that they learn through the provision of their broadband Internet access service? We seek comment on what sort of customer proprietary information broadband Internet access providers possess, e.g., information about consumers' service plans, installed equipment, or patterns of Internet access use. We note that long before Congress enacted section 222 of the Act, the Commission had recognized the need for privacy requirements associated with the provision of enhanced services and had adopted CPNI-related requirements in

conjunction with other Computer Inquiry obligations.

4. Section 258 of the Act prohibits telecommunications carriers from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, a practice commonly known as "slamming." In a series of orders, the Commission adopted various rules to implement section 258, and concluded that state authorities should have primary responsibility for administering the rules. By providing for state administration of slamming rules, the Commission recognized that state authorities are particularly well-equipped to handle such complaints because states are close to consumers and are familiar with trends in their regions. The Commission also recognized, however, that all states may not have the resources available to handle slamming complaints. Accordingly, the Commission's rules allow consumers in states that do not "opt-in" to administer the slamming rules to file slamming complaints with the Commission.

5. We seek comment on whether we should exercise our Title I authority to impose similar requirements on providers of broadband Internet access service. Commenters should explain in what circumstances subscribers to broadband Internet access could get "slammed." Is the provisioning process for broadband Internet access service such that an unauthorized change in provider is more likely in situations where the provider relies on third-party broadband transmission facilities?

6. The Commission has adopted truth-in-billing rules to ensure that consumers receive accurate, meaningful information on their telecommunications bills that will allow consumers to better understand their bills, compare service offerings, and thereby promote a more efficient, competitive marketplace. In general, the Commission's rules require that a telecommunication carrier's bill must:

- (1) Be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered;
- (2) identify the service provider associated with each charge;
- (3) clearly and conspicuously identify any change in service provider;
- (4) identify those charges for which failure to pay will not result in disconnection of basic local service; and
- (5) provide a toll-free number for consumers to inquire or dispute any charges.

The Commission's rules on truth-in-billing are designed to reduce slamming, cramming (which is the practice of

placing unauthorized, misleading, or deceptive charges on a telecommunications bill and is most likely to occur when a carrier does not clearly or accurately describe all of the relevant charges on the consumer's bill), and other telecommunications fraud by setting standards for accuracy on bills for telecommunications service.

7. We seek comment on whether we should exercise our Title I authority to impose requirements on broadband Internet access service providers that are similar to our truth-in-billing requirements or are otherwise geared toward reducing slamming, cramming, or other types of telecommunications-related fraud. For example, during 2005, the Commission's Consumer and Governmental Affairs Bureau has received complaints about the billing practices of broadband Internet access services providers, including complaints related to double billing, billing for unexplained charges, and billing for cancelled services. Overall, parties should explain what problems customers of broadband Internet access service are likely to have with their bills and whether we should address these problems through truth-in-billing-type requirements.

8. Section 63.100(a) through (e) of the Commission's rules, 47 CFR 63.100(a)–(e), requires certain communications providers to notify the Commission of outages of thirty or more minutes that affect a substantial number of customers or involve major airports, major military installations, key government facilities, nuclear power plants, or 911 facilities. We seek comment on whether we should exercise our Title I authority to impose any similar requirements on broadband Internet access service providers. Do the purposes of our network outage reporting requirements apply to outages of broadband Internet access service? Should we adopt requirements that differ depending on the nature of the facility or the type of customer served?

9. Section 214 of the Act limits a telecommunications carrier's ability to discontinue unilaterally its service to customers. Section 63.71 of the Commission's implementing rules, 47 CFR 63.71 generally requires that domestic carriers wishing to "discontinue, reduce, or impair" services must first request authority to do so from the Commission and must notify affected customers and others of their plans.

10. We seek comment on whether we should exercise our Title I authority to impose discontinuance-type requirements on providers of broadband Internet access service. As customers

grow more dependent on broadband Internet access services, does the need for notice to customers grow stronger? Or do the multiplicity and availability of broadband Internet access providers mitigate the need for such notice?

11. Finally, we seek to ensure that our actions today do not jeopardize the policies of section 254(g). That section required the Commission to adopt rules "to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas \* \* \* be no higher than the rates charged by each such provider to its subscribers in urban areas." The provision further required that the rules "require that a provider of interstate interexchange telecommunications services \* \* \* provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State." The Commission has forborne from the requirements of section 254(g) with regard to private line services, of which DSL is one. Because the policies underlying section 254(g) remain important, however, we ask whether we should exercise our Title I authority to impose any similar requirements on providers of broadband Internet access services, particularly as consumers substitute broadband services and applications for narrowband services that were covered by section 254(g).

12. We recognize that the states play an important role in ensuring that public safety and consumer protection goals are met. The Commission has recently announced the creation of a federal-state task force on VoIP E911 enforcement, and we believe that this NPRM may give rise to additional areas in which cooperation between this Commission and the states can achieve the best results. We note in this regard that NARUC has recently advocated for a "functional" approach to questions of federal and state jurisdiction, particularly with respect to consumer protection issues. For example, with respect to CPNI, NARUC recommends that the Commission be primarily responsible for establishing rules, while state or local authorities assume responsibility for enforcing those rules. To the extent that the Commission finds it necessary to impose consumer protection and related regulations on broadband Internet access service providers, we seek comment on how best to harmonize federal regulations with the states' efforts and expertise in these areas. Do commenters support NARUC's functional approach? In what other ways can the federal and state

governments cooperate in order to ensure the best results for consumers?

13. We note that consumers have various methods of pursuing complaints with the Commission against entities subject to our jurisdiction. In particular, the Commission's informal complaint process permits consumers to submit complaints to the Commission by any reasonable means, including by telephone, facsimile, postal mail, e-mail and an Internet complaint form. Consumer Center representatives, known as Consumer Advocacy and Mediation Specialists or CAMSs, are available to assist consumers in filing complaints if needed. CAMSs staff review complaints for subject matter content and determine appropriate handling of the complaints.

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

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

#### **Initial Regulatory Flexibility Analysis**

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### *Need for, and Objectives of, the Proposed Rules*

16. The broadband marketplace before us today is an emerging and rapidly changing one. Nevertheless, consumer protection remains a priority for the Commission. We initiate this rulemaking to ensure that consumer protection objectives in the Act are met as the industry shifts from narrowband to broadband services. Through this NPRM, the Commission's objective is to

develop a framework for consumer protection in the broadband age—a framework that ensures that consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology. The NPRM seeks comment on whether the Commission should impose, for example, privacy requirements similar to the Act's CPNI requirements, slamming, truth-in-billing, network outage reporting, § 214 discontinuance, or § 254(g) rate averaging requirements on providers of broadband Internet access service. We also seek comment on how best to harmonize federal regulations with the states' efforts and expertise in consumer protection issues.

#### *Legal Basis*

17. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1–4, 201–205, 251, 252, 254, 256, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 251, 252, 254, 256, 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

#### *Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply*

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

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

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

21. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This

number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

22. We note that the list of potentially affected entities below is perhaps more expansive than is necessary. We have, for instance, included services that are apparently currently not a part of the Internet industry, as well as manufacturers.

#### *Telecommunications Service Entities*

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

24. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

25. *Competitive Local Exchange Carriers, Competitive Access Providers*

(CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.” Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are “Shared-Tenant Service Providers,” and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are “Other Local Service Providers.” Of the 39, an estimated 38 have 1,500 or fewer employees and one has 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 our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

26. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 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 our action.

27. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 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.

28. *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. According to Commission data, 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two 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. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

29. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

30. *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. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority

of OSPs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

31. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

32. *800 and 800-Like Service Subscribers*. Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

33. *International Service Providers*. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite

Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 million or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273 firms had annual receipts of under \$10 million, and an additional 24 firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

34. The second category—Other Telecommunications—includes "establishments primarily engaged in \* \* \* providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year. Of this total, 424 firms had annual receipts of \$5 million to \$9,999,999 and an additional six firms had annual receipts of \$10 million to \$24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

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

36. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless

Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of paging providers decreased approximately 51 percent from 1997 to 2002. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

37. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard.

38. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. In the

Paging Third Report and Order, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 370 are small, under the SBA-approved small business size standard.

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

40. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 445 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 245 of these are small under the SBA small business size standard.

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

42. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that,

together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

43. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. Assuming this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard. In addition, limited preliminary census

data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

44. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

45. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The

Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

46. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

47. *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.

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

49. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

50. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At

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

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

52. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be

affected by the rules and policies adopted herein.

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

54. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million



in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

55. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

56. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than

1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe 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.

57. *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.

58. *Cable and OVS Operators: Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

59. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than

400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

60. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

61. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified approximately 25 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 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

62. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of Internet service providers increased approximately five percent from 1997 to 2002.

63. *Other Internet-Related Entities: Web Search Portals.* Our action pertains to 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 Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the census bureau has identified firms that "operate Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users." The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine 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.

64. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily \* \* \* provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is \$21 million or less in average annual receipts. According to Census Bureau data for 1997, there were 3,700 firms in this category that operated for the entire year. Of these, 3,477 had annual receipts of under \$10 million, and an additional 108 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

65. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives). Our action pertains to VoIP services, which could be provided by entities that provide other services such as 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 \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine 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.

66. *Internet Publishing and Broadcasting.* This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast. The SBA has developed a small business size standard for this new (2002) census category; that size standard is 500 or fewer employees. To assess the prevalence of small entities in this category, we will use 1997 Census Bureau data for a relevant, now-superseded census category, "All Other Information Services." The SBA small business size standard for that prior category was \$6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in the prior category that operated for the entire year. Of these, 172 had annual receipts of under \$5

million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of the firms in this current category are small entities that may be affected by our action.

67. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of \$21 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 1997 indicate that there were 8,188 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts under \$10 million, and an additional 289 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 19,334 firms that operated for the entire year. Of these, 18,786 had annual receipts of under \$10 million, and an additional 352 firms had receipts of between \$10 million and \$24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 5,524 firms that operated for the entire year. Of these, 5,484 had annual receipts of under \$10 million, and an additional 28 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

68. *Equipment Manufacturers.* The equipment manufacturers described in this section are apparently merely indirectly affected by our current action, and therefore would not formally be a part of this RFA analysis. We have included them, however, to broaden the record in this proceeding and to alert them to our decisions.

69. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Examples of products in this category include "transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio

and television studio and broadcasting equipment” and may include other devices that transmit and receive IP-enabled services, such as personal digital assistants (PDAs). Under the SBA size standard, firms are considered small if they have 750 or fewer employees. According to Census Bureau data for 1997, there were 1,215 establishments in this category that operated for the entire year. Of those, there were 1,150 that had employment of under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category was approximately 61.35%, so we estimate that the number of wireless equipment manufacturers with employment of under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Consequently, we estimate that the majority of wireless communications equipment manufacturers are small entities that may be affected by our action.

**70. Telephone Apparatus Manufacturing.** This category “comprises establishments primarily engaged primarily in manufacturing wire telephone and data communications equipment.” Examples of pertinent products are “central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, and data communications equipment, such as bridges, routers, and gateways.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 598 establishments in this category that operated for the entire year. Of these, 574 had employment of under 1,000, and an additional 17 establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

**71. Electronic Computer Manufacturing.** This category “comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 563 establishments in this category that operated for the entire year. Of these, 544 had employment of

under 1,000, and an additional 11 establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

**72. Computer Terminal Manufacturing.** “Computer terminals are input/output devices that connect with a central computer for processing.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 142 establishments in this category that operated for the entire year, and all of the establishments had employment of under 1,000. Consequently, we estimate that the majority or all of these establishments are small entities that may be affected by our action.

**73. Other Computer Peripheral Equipment Manufacturing.** Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 1061 establishments in this category that operated for the entire year. Of these, 1,046 had employment of under 1,000, and an additional six establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

**74. Fiber Optic Cable Manufacturing.** These establishments manufacture “insulated fiber-optic cable from purchased fiber-optic strand.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 38 establishments in this category that operated for the entire year. Of these, 37 had employment of under 1,000, and one establishment had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

**75. Other Communication and Energy Wire Manufacturing.** These establishments manufacture “insulated wire and cable of nonferrous metals from purchased wire.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 275 establishments in this category that

operated for the entire year. Of these, 271 had employment of under 1,000, and four establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority or all of these establishments are small entities that may be affected by our action.

**76. Audio and Video Equipment Manufacturing.** These establishments manufacture “electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data for 1997, there were 554 establishments in this category that operated for the entire year. Of these, 542 had employment of under 500, and nine establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

**77. Electron Tube Manufacturing.** These establishments are “primarily engaged in manufacturing electron tubes and parts (except glass blanks).” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data for 1997, there were 158 establishments in this category that operated for the entire year. Of these, 148 had employment of under 500, and three establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

**78. Bare Printed Circuit Board Manufacturing.** These establishments are “primarily engaged in manufacturing bare (*i.e.*, rigid or flexible) printed circuit boards without mounted electronic components.” The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,389 establishments in this category that operated for the entire year. Of these, 1,369 had employment of under 500, and 16 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

**79. Semiconductor and Related Device Manufacturing.** These establishments manufacture “computer storage devices that allow the storage

and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,082 establishments in this category that operated for the entire year. Of these, 987 had employment of under 500, and 52 establishments had employment of 500 to 999.

80. *Electronic Capacitor Manufacturing.* These establishments manufacture "electronic fixed and variable capacitors and condensers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 128 establishments in this category that operated for the entire year. Of these, 121 had employment of under 500, and four establishments had employment of 500 to 999.

81. *Electronic Resistor Manufacturing.* These establishments manufacture "electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 118 establishments in this category that operated for the entire year. Of these, 113 had employment of under 500, and 5 establishments had employment of 500 to 999.

82. *Electronic Coil, Transformer, and Other Inductor Manufacturing.* These establishments manufacture "electronic inductors, such as coils and transformers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 448 establishments in this category that operated for the entire year. Of these, 446 had employment of under 500, and two establishments had employment of 500 to 999.

83. *Electronic Connector Manufacturing.* These establishments manufacture "electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 347 establishments in this category that operated for the entire year. Of these,

332 had employment of under 500, and 12 establishments had employment of 500 to 999.

84. *Printed Circuit Assembly (Electronic Assembly) Manufacturing.* These are establishments "primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 714 establishments in this category that operated for the entire year. Of these, 673 had employment of under 500, and 24 establishments had employment of 500 to 999.

85. *Other Electronic Component Manufacturing.* These are establishments "primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,835 establishments in this category that operated for the entire year. Of these, 1,814 had employment of under 500, and 18 establishments had employment of 500 to 999.

86. *Computer Storage Device Manufacturing.* These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 209 establishments in this category that operated for the entire year. Of these, 197 had employment of under 500, and eight establishments had employment of 500 to 999.

#### *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

87. Should the Commission decide to adopt any regulations to ensure that consumer protection needs are met by all providers of broadband Internet access service, the associated rules potentially could modify the reporting and recordkeeping requirements of certain broadband Internet access services providers. We could, for instance, require that broadband Internet access service providers must comply with slamming, truth-in-billing-type protections, or network outage reporting requirements. These proposals

may impose additional reporting or recordkeeping requirements on entities. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate. Entities, especially small businesses, are encouraged to quantify the costs and benefits of any reporting requirement that may be established in this proceeding.

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

88. 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.

89. The Commission's primary objective is to develop a framework for consumer protection in the broadband era—a framework that ensures that consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology. We seek comment here on the effect the various proposals described in the NPRM, and summarized below, will have on small entities, and on what effect alternative rules would have on those entities. We invite comment on ways in which the Commission can achieve its goal of protecting consumers while at the same time impose minimal burdens on small broadband Internet access service providers. With respect to any of our consumer protection regulations already in place, has the Commission adopted any provisions for small entities that we should similarly consider here?

90. *CPNI.* In this NPRM, the Commission asks whether it should extend privacy requirements similar to the Act's CPNI requirements to providers of broadband Internet access services. We ask, for example, whether we should forbid broadband Internet access providers from disclosing, without their customers' approval, information about their customers that they learn through the provision of their broadband Internet access service. By

developing the record with respect to privacy concerns, the Commission can appropriately determine whether providers of broadband Internet access services, including small entities, should be subject to similar privacy regulations.

91. *Slamming.* We seek comment on whether we should impose slamming requirements on providers of broadband Internet access service and to explain in what circumstances subscribers to broadband Internet access could get “slammed.” We also ask whether the provisioning process for broadband Internet access service is such that an unauthorized change in provider is more likely in situations where the provider relies on third-party broadband transmission facilities. We recognize that small broadband Internet access service providers may rely more on third-party broadband transmission facilities and could potentially inform the Commission as to whether slamming is likely to occur in those situations.

92. *Truth-in-Billing.* We invite comment on whether we should impose requirements on broadband Internet access service providers that are similar to our truth-in-billing requirements or are otherwise geared toward reducing slamming, cramming, or other types of telecommunications-related fraud. We ask parties to explain what problems customers of broadband Internet access service are likely to have with their bills and whether we should address these problems through truth-in-billing-type requirements. What effect will this proposal have on small entities, and are there alternatives to imposing truth-in-billing type regulations?

93. *Network Outage Reporting.* We seek comment as to whether broadband Internet access service providers should notify the Commission of outages of thirty or more minutes that affect a substantial number of customers or involve major airports, major military installations, key government facilities, nuclear power plants, or 911 facilities. We encourage small entities to identify any alternatives that would protect consumers while at the same time

minimizing any burden on small broadband Internet access providers.

94. *Section 214 Discontinuance.* In the NPRM, the Commission stated that section 214 of the Act limits a telecommunications carrier’s ability to discontinue unilaterally its service to customers. The Commission’s implementing rules generally require that domestic carriers wishing to “discontinue, reduce, or impair” services must first request authority to do so from the Commission and must notify affected customers and others of their plans. We ask whether the Commission should impose discontinuance-type requirements on providers of broadband Internet access service.

95. *Section 254(g) Rate Averaging Requirements.* In the NPRM, the Commission explains that section 254(g) required the Commission to adopt rules “to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas \* \* \* be no higher than the rates charged by each such provider to its subscribers in urban areas.” We ask, for example, whether we should adopt similar rate averaging requirements on providers of broadband Internet access services, particularly as consumers substitute broadband services and applications for narrowband services that were covered by section 254(g).

96. In the NPRM, we ask commenters to address whether the imposition of regulations pursuant to our ancillary jurisdiction, and the corresponding ability of consumers to take advantage of Commission avenues for resolution of consumer protection issues, is desirable and necessary as a matter of public policy, or whether we should rely on market forces to address some or all of the areas listed. The option of relying on market forces may benefit entities, especially small entities, who may find it costly or burdensome to comply with Commission regulations. We also ask whether these types of regulations are more or less relevant in the context of broadband Internet access service than

they are for traditional telephony services. In addition, we ask commenters to describe any technical, economic, or other impediments that may affect the ability of broadband Internet access service providers to comply with such regulations. We also ask whether there are areas of consumer protection not listed above for which the Commission should impose regulations.

97. *Federal and State Involvement.* To the extent that the Commission finds it necessary to impose consumer protection and related regulations on broadband Internet access service providers, we also seek comment on how best to harmonize federal regulations with the states’ efforts and expertise in these areas.

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

98. None.

#### **Ordering Clauses**

99. Accordingly, *it is ordered that*, pursuant to sections 1–4, 10, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201–205, 214, 222, 225, 251, 252, 254–256, 258, 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, the Report and Order and Notice of Proposed Rulemaking are adopted.

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

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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