

adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 13132, Federalism**

This rule involves no policies that have federalism implications under Executive Order 13132.

**Executive Order 12988, Civil Justice Reform**

This rule meets the applicable standards of Executive Order 12988.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

■ 1. The authority citation for part 64 is revised to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

**§ 64.6 [Amended]**

The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
<b>Region IV</b> Tennessee: Greenville, Town of, Greene County.	470069	June 12, 1975, Emerg; August 1, 1986, Reg; July 3, 2006, Susp.	July 3, 2006 .....	July 3, 2006.
<b>Region VI</b> Louisiana: Arcadia, Town of, Bienville Parish .....	220029	June 12, 1975, Emerg; March 1, 1986, Reg; July 3, 2006, Susp.	.....do* .....	Do.
Ringgold, Town of, Bienville Parish .....	220030	March 30, 1976, Emerg; October 15, 1985, Reg; July 3, 2006, Susp.	.....do* .....	Do.

\*-do--Ditto.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: June 22, 2006.

**David I. Maurstad,**

Mitigation Division Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 06-6071 Filed 7-7-06; 8:45 am]

BILLING CODE 9110-12-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1 and 54**

[CC Docket No. 96-45, WC Docket No. 04-36; FCC 06-94]

**Federal-State Joint Board on Universal Service; IP-Enabled Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) adopts rules that make interim modifications to the existing approach for assessing contributions to the federal universal service fund (USF or Fund) in order to provide stability while the Commission continues to examine more fundamental

reform. First, the Commission raises the interim wireless safe harbor from its current 28.5 percent level to 37.1 percent. Second, the Commission establishes universal service contribution obligations for providers of interconnected voice over Internet Protocol (VoIP) service. These rules are essential for securing the viability of universal service—a fundamental goal of communications policy as expressed in the Communications Act—in the near-term.

**DATES: Effective Date:** These rules contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date. **Comment Date:** Written comments by the public on the new and/or modified information collection requirements are due September 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Amy Bender, Wireline Competition Bureau, (202) 418-1469, or via e-mail at [Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov).

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact

Judith B. Herman at (202) 418-0214, or via e-mail at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (Order) in CC Docket No. 96-45 and WC Docket No. 04-36, FCC 06-94, adopted June 21, 2006, and released June 27, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. 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>.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington,

DC 20554, or via the Internet to *Judith.B.Herman@fcc.gov*.

**Compliance Dates:** Providers of interconnected VoIP service must file FCC Form 499–Q quarterly, beginning with the August 1, 2006 filing. Interconnected VoIP providers must file Blocks 1, 2, and 6 of FCC Form 499–A prior to filing the FCC Form 499–Q on August 1, 2006. Interconnected VoIP providers must complete and file FCC Form 499–A beginning on April 1, 2007.

### Synopsis of the Report and Order

1. **Background.** In 1996, Congress directed the Commission and the states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications services to all Americans in a changing competitive environment. Since then, the Commission has undertaken a number of reforms to fulfill the universal service goals established by Congress, and this Order takes additional steps to continue to satisfy these goals.

2. The interim revisions adopted in this Order respond to changes that have occurred in recent years in the telecommunications market, but retain the essential elements of the current approach to USF contributions. Specifically, while stand-alone interstate long distance revenues have been declining, wireless services and interconnected VoIP services, both of which typically include bundled long distance service, have been growing dramatically. As noted below, from December 2000 to December 2004, the number of wireless subscribers grew from approximately 101 million to approximately 181 million, and wireless providers' revenues grew from approximately \$70 billion to approximately \$122 billion. Similarly, the number of VoIP subscribers has grown from about 150 thousand at the end of 2003 to about 4.2 million at the end of 2005. The interim revisions made in this Order respond to these growing pressures on the stability and sustainability of the Fund.

3. Of particular relevance to this Order are three prior Commission actions. First, in 2002, the Commission sought additional comment on the ability of mobile wireless providers to report actual interstate end-user telecommunications revenue and whether the Commission should eliminate the interim safe harbor of 28.5 percent that it had established for mobile wireless providers. Second, as part of its efforts to ensure the long-term stability and sufficiency of the universal service support system in an increasingly competitive marketplace,

the Commission began a proceeding to revisit the universal service contribution methodology in May 2001. In its Notice of Proposed Rulemaking, the Commission sought comment generally on whether and how to streamline and reform the contribution assessment methodology. Among other things, the Commission sought comment on whether to modify the existing revenue-based methodology, as well as whether to replace that methodology with one that assesses contributions on the basis of a flat-fee charge, such as a per-line charge. Finally, on March 10, 2004, the Commission initiated a proceeding to examine issues relating to Internet Protocol (IP)-enabled services—services and applications making use of the IP, including, but not limited to, VoIP services. In the *IP-Enabled Services Notice*, the Commission asked commenters to address, among other things, the universal service contribution obligations of both facilities-based and non-facilities-based providers of IP-enabled services.

4. **Discussion.** In this Order, we adopt interim revisions to the existing approach for assessing contributions for the federal USF that will preserve and advance universal service in the short term, while we continue to explore more fundamental reform. These interim revisions comport with the requirements of section 254 of the 1996 Act, and do so in a manner that responds to recent developments in the communications industry marketplace. See 47 U.S.C. 254. First, we raise the interim mobile wireless safe harbor from 28.5 percent to 37.1 percent. Second, we establish universal service contribution obligations for providers of interconnected VoIP service.

5. We conclude that immediate interim measures to revise the existing approach to USF contributions are necessary and in the public interest to preserve and advance universal service. There is widespread agreement that the Fund is currently under significant strain. The size of the Fund has grown significantly, with disbursements rising from approximately \$4.4 billion in 2000 to approximately \$6.5 billion in 2005, and projected to grow even further in the coming years. Moreover, changing market conditions, including the decline in long distance revenue and the growth of wireless and interconnected VoIP services, are eroding the assumptions that form the basis for the current revenue-based system.

6. When the revenue-based system was adopted in 1997, assessable interstate revenues were growing. The total assessable revenue base has recently declined, however, from about

\$79.0 billion in 2000 to about \$74.7 billion in 2004, while Fund disbursements grew from approximately \$4.4 billion in 2000 to approximately \$5.7 billion in 2004, and continued to grow to approximately \$6.5 billion in 2005. Declines in the contribution base combined with growth in the size of the Fund increasingly have placed upward pressure on the percentage of assessable revenues that must be contributed to the Fund (the “contribution factor”). The contribution factor grew from 5.9 percent in the first quarter of 2000 to 8.9 percent in the fourth quarter of 2004, and is 10.9 percent for the second quarter of 2006. The pressure caused by a declining revenue base combined with growing disbursement needs jeopardizes the immediate sufficiency and stability of the support mechanisms, demonstrating the need for immediate, interim USF improvements, while we continue to pursue long-term fundamental reform of the contribution methodology.

7. In making our decision today, we considered the voluminous record in light of the current pressures on the Fund. We decline to adopt, at this time, more fundamental changes to the entire universal service program or to the contribution methodology. For example, one commenter has suggested that the entire universal service program is “broken” and advocated that a “holistic, coordinated rational reform of all universal support mechanisms” is necessary. It argued that reforming the contribution methodology in isolation, without addressing distribution issues, is ill-advised. Other parties advocate fundamentally reforming the contribution methodology by moving away from a revenue-based approach. The scale of reforming universal service is considerable, and we will continue to work towards stabilizing the Fund, as well as the entire universal service system. We note, however, that a consensus approach to reform has not developed. Thus, while we recognize that there may be merit to fundamental reform of the current USF contribution methodology, we find, at this time, that the discrete interim reforms we make to expand the contribution base will best promote the statutory requirements set forth in section 254 of the 1996 Act in the near-term, while providing the Commission with the opportunity to continue to address the challenges of fundamental reform.

8. **Wireless Provider Contributions.** To sustain the sufficiency of the Fund at this time, we raise the current interim safe harbor for mobile wireless providers from 28.5 percent to 37.1 percent, a level that better reflects that

industry's interstate revenues in light of the extraordinary growth of wireless services since 2002, the last time the Commission revisited this issue. We also require mobile wireless providers that use traffic studies (rather than use the safe harbor) to report interstate revenues to submit those traffic studies to USAC and to the Commission for review.

9. The revised interim safe harbor of 37.1 percent is the highest percentage of interstate and international usage by a wireless company supported in the record. Specifically, according to a traffic study conducted by TNS Telecoms for TracFone Wireless, the (then) seven large national mobile wireless service providers' interstate minutes of use ranged from 11.9 percent to 37.1 percent. Accordingly, consistent with the Commission's previous rationale for raising the interim wireless safe harbor to the highest level in the record, and based on the record now before us, we set the revised interim wireless safe harbor at 37.1 percent. Mobile wireless providers that choose to use the revised interim safe harbor must report 37.1 percent of their telecommunications revenues as interstate beginning with fourth quarter 2006 projected revenues that they will report on the August 1, 2006 FCC Form 499-Q.

10. We disagree with those parties that assert that the Commission should not rely on the TNS Telecoms traffic study because of concerns with sample size and methodology. Notably, no other wireless provider has proposed an alternative safe harbor level or submitted a traffic study that looks at various wireless providers to support a different, updated, interim safe harbor level. Indeed, none of the parties that criticize the TNS Telecoms study have submitted any data or statistical analysis that would show a specific upward bias in the TNS Telecoms study.

11. In light of apparent data discrepancies revealed in a preliminary review by Commission staff of FCC Form 499-A filings and other reports filed by wireless telephony providers, we take an additional step to ensure the accuracy of reported revenue data. Currently, a mobile wireless provider that reports actual revenue data must provide, upon request, documentation to support the reporting of actual interstate telecommunications revenues. We note that a mobile wireless provider may use a traffic study as a proxy for calculating its total amount of actual interstate revenues. We are concerned that the use of traffic studies may be, in part, a cause of these data reporting problems. For example, mobile wireless

providers have incentives to bias any traffic studies to minimize their amount of interstate and international end-user revenues and thereby minimize their Fund contributions; there are no countervailing market forces to offset these incentives. Consequently, we now require any mobile wireless provider that uses a traffic study to determine its interstate end-user revenues for universal service contribution purposes to submit the study to the Commission and to USAC for review. Any mobile wireless provider using a traffic study shall submit the traffic study no later than the deadline for submitting the FCC Form 499-Q for the same time period. We also remind wireless carriers that, while they are permitted to continue to report revenues at either the legal entity level or on a consolidated basis, they are required to decide whether to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category.

12. Accordingly, we take this opportunity to caution universal service contributors (and other entities reporting data to the Commission) that we will not hesitate to use our enforcement authority to investigate and remedy these and other discrepancies in data reported to the Commission. Moreover, we expect filers that have made reporting errors to re-file the relevant FCC forms or reports as soon as possible (regardless of whether the forms are due to the Commission, USAC, or another entity). To the extent that filers determine that they should have made additional contributions to the Fund, we further expect those entities to work with USAC to resolve their contribution obligations.

13. *Interconnected VoIP Services.* We require providers of "interconnected VoIP services," as defined by the Commission, to contribute to the federal USF under the existing contribution methodology on an interim basis. As described above, the number of VoIP subscribers in the United States has grown significantly in recent years, and we expect that trend to continue. At the same time, the USF contribution base has been shrinking, and the contribution factor has risen considerably as a result. We therefore find that extending USF contribution obligations to providers of interconnected VoIP services is necessary at this time in order to respond to these growing pressures on the stability and sustainability of the Fund.

14. The Commission has not yet classified interconnected VoIP services as "telecommunications services" or "information services" under the

definitions of the Act. Again here, we do not classify these services. To the extent interconnected VoIP services are telecommunications services, they are of course subject to the mandatory contribution requirement of section 254(d). Absent our final decision classifying interconnected VoIP services, we analyze the issues addressed in this Order under our permissive authority pursuant to section 254(d) and our Title I ancillary jurisdiction. Specifically, we find that interconnected VoIP providers are "providers of interstate telecommunications" under section 254(d), and we assert the Commission's permissive authority to require interconnected VoIP providers "to contribute to the preservation and advancement of universal service" because "the public interest so requires." We also exercise our ancillary jurisdiction to extend contribution obligations to interconnected VoIP providers. We note that both Vonage and the VON Coalition have stated on the record in this proceeding their belief that interconnected VoIP providers should be required to contribute to the Fund, apparently conceding that the Commission has the authority to impose such a requirement. Finally, we address implementation issues related to our requirement that interconnected VoIP providers contribute to the USF.

15. *Scope.* We extend universal service obligations to providers of interconnected VoIP services, as previously defined by the Commission. The Commission has defined "interconnected VoIP services" as those VoIP services that: (1) Enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN. We emphasize that interconnected VoIP service offers the capability for users to receive calls from and terminate calls to the PSTN; the obligations we establish apply to all VoIP communications made using an interconnected VoIP service, even those that do not involve the PSTN. Furthermore, these obligations apply regardless of how the interconnected VoIP provider facilitates access to and from the PSTN, whether directly or by making arrangements with a third party. Finally, we recognize that the definition of interconnected VoIP services may need to expand as new VoIP services increasingly substitute for traditional phone service.

16. We believe that it is appropriate to require USF contributions from

interconnected VoIP providers because this approach is consistent with important principles that the Commission has established in its implementation of section 254 of the Act. Specifically, the Commission has previously found it appropriate to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN. In addition, in the *Universal Service First Report and Order*, the Commission established competitive neutrality as a principle to guide the development of universal service policies. As discussed in more detail below, we find that these two principles support our conclusion that extending universal service contribution obligations to this particular category of providers is in the public interest.

17. *Permissive Authority Under Section 254(d)*. Section 254(d) states that the Commission may require “[a]ny other provider of interstate telecommunications” to contribute to universal service, “if the public interest so requires.” Pursuant to the Act’s definitions, a “provider of interstate telecommunications” provides “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” Unlike providers of interstate telecommunications services, however, providers of interstate telecommunications do not necessarily “offer” telecommunications “for a fee directly to the public.” The Commission has previously used this permissive authority to require private carriers and payphone aggregators to contribute to the Fund. In the *IP-Enabled Services Notice*, the Commission sought comment on, among other things, its authority, including mandatory and permissive authority under section 254(d), to require universal service contributions by IP-enabled service providers.

18. *Providers of Interstate Telecommunications*. We find that interconnected VoIP providers are “providers of interstate telecommunications” as required for the use of the permissive authority pursuant to section 254(d). Specifically, using the Act’s definitions, we find that interconnected VoIP providers “provide” “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”

19. First, we must consider whether interconnected VoIP providers

“provide” telecommunications. Congress did not define the term “provide” or “provider,” but the structure of the Act informs us that “provide” is a different and more inclusive term than “offer.” It is settled law that the determination of what is “offered,” under the Act’s definitions, “turns on the nature of the functions the end user is offered.” Had Congress intended us to look at the same factors in analyzing our permissive authority under section 254(d), it would have referred to “other offerors of telecommunications.” Because Congress used a different term—“providers”—we understand Congress to have meant something broader. Common definitions of the term “provide” suggest that we should consider the meaning of “provide” from a supply side, i.e., from the provider’s point of view. For example, Black’s Law Dictionary defines “provide” to mean “[t]o make, procure, or furnish for future use, prepare. To supply; to afford; to contribute.” Transmission is an input into the finished service “offered” to the customer. But from the interconnected VoIP provider’s point of view, we believe that the provider “provides” more than just a finished service. We believe that it is reasonable to conclude that a provider “furnishes” or “supplies” components of a service, in this case, transmission.

20. Second, we determine that interconnected VoIP providers provide “telecommunications.” As the Commission has recognized, “the heart of ‘telecommunications’ is transmission.” The Commission has previously concluded that interconnected VoIP services involve “transmission of [voice] by aid of wire, cable, or other like connection” and/or “transmission by radio” of voice. Indeed, by definition, interconnected VoIP services are those “permitting users to receive calls from and terminate calls to the PSTN.” To provide this capability, interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others. “Over the top” interconnected VoIP providers generally purchase access to the PSTN from a telecommunications carrier who accepts outgoing traffic from and delivers incoming traffic to the interconnected VoIP provider’s media gateway. The telecommunications carrier supplies transmission to or from the PSTN user, or transmits the communication to another carrier that can transmit the communication to the PSTN user. Facilities-based interconnected VoIP providers similarly enter into

arrangements with telecommunications carriers to complete communications to and from the PSTN. The telecommunications carriers involved in originating or terminating a communication via the PSTN are by definition offering “telecommunications.” Just as the Commission has previously found resellers to be supplying telecommunications to their customers even though they do not own or operate the transmission facilities, we find interconnected VoIP providers to be “providing” telecommunications regardless of whether they own or operate their own transmission facilities or they obtain transmission from third parties. In contrast to services that merely use the PSTN to supply a finished product to end users, interconnected VoIP supplies PSTN transmission itself to end users.

21. Finally, the Commission previously determined that Vonage’s interconnected VoIP service is a jurisdictionally mixed service in which part of the service is interstate in nature. We believe that other interconnected VoIP services similarly are jurisdictionally mixed and thus are subject to USF contributions on interstate and international revenues. For these reasons, we conclude that interconnected VoIP providers are “providers of interstate telecommunications” under section 254(d).

22. *Public Interest*. Next, we must consider whether requiring interconnected VoIP providers to contribute to the USF is in the public interest. We conclude that it is. The Commission has previously found it in the public interest to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN. We believe that providers of interconnected VoIP services similarly benefit from universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the PSTN, which is supported by universal service mechanisms. As the Fifth Circuit explained, “Congress designed the universal service scheme to exact payments from those companies benefiting from the provision of universal service.” Like other contributors to the Fund, interconnected VoIP providers are “dependent on the widespread telecommunications network for the maintenance and expansion of their business,” and they “directly benefit[] from a larger and larger network.” It is therefore

consistent with Commission precedent to impose obligations that correspond with the benefits of universal service that these providers already enjoy.

23. We also find that the principle of competitive neutrality supports our conclusion that we should require interconnected VoIP providers to contribute to the support mechanisms. Competitive neutrality means that “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.” As the Commission has noted, interconnected VoIP service “is increasingly used to replace analog voice service.” As the interconnected VoIP service industry continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations. Moreover, we do not want contribution obligations to shape decisions regarding the technology that interconnected VoIP providers use to offer voice services to customers or to create opportunities for regulatory arbitrage. The approach we adopt today reduces the possibility that carriers with universal service obligations will compete directly with providers without such obligations. We therefore find that the principle of competitive neutrality is served by extending universal service obligations to interconnected VoIP service providers.

24. Thus, based on the record before us, we find that interconnected VoIP providers, like telecommunications carriers, have built their businesses, or a part of their businesses, on access to the PSTN. For these reasons, we find that the public interest requires interconnected VoIP providers, as providers of interstate telecommunications, to contribute to the preservation and advancement of universal service in the same manner as carriers that provide interstate telecommunications services. Finally, we note that the inclusion of such providers as contributors to the support mechanisms will broaden the funding base, lessening contribution requirements on telecommunications carriers or any particular class of telecommunications providers.

25. *Ancillary Jurisdiction.* In addition to permissive authority under section 254(d), we exercise our ancillary jurisdiction under Title I of the Act to extend universal service contribution obligations to interconnected VoIP providers. We conclude that regardless of the statutory classification of these

services, the Commission has ancillary jurisdiction to promote universal service by adopting universal service contribution rules for interconnected VoIP services, and commenters largely agree. Ancillary jurisdiction may be employed, in the Commission’s discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is “reasonably ancillary to the effective performance of [its] various responsibilities.” Both predicates for ancillary jurisdiction are satisfied here.

26. First, as we concluded in the *VoIP 911 Order*, interconnected VoIP services fall within the subject matter jurisdiction granted to us in the Act. Second, our analysis requires us to evaluate whether imposing universal service contribution obligations is reasonably ancillary to the effective performance of the Commission’s various responsibilities. Based on the record in this matter, we find that section 254 and section 1 of the Act provide the requisite nexus.

27. Section 254 requires the Commission to establish “specific, predictable, and sufficient mechanisms \* \* \* to preserve and advance universal service.” The Act requires telecommunications carriers to contribute to those mechanisms on a mandatory basis, and as discussed above, section 254(d) grants the Commission permissive authority to require other “providers of interstate telecommunications” to contribute. As discussed above, we recognize that interconnected VoIP service “is increasingly used to replace analog voice service.” We expect that trend to continue. If we do not require interconnected VoIP providers to contribute, the revenue base that supports the Fund will continue to shrink, while these providers continue to benefit from their interconnection to the PSTN. We believe that this trend threatens the stability of the Fund and our action to extend contributions obligations to interconnected VoIP providers is “reasonably ancillary to the effective performance of [our] responsibilities” under section 254. Thus, we determine, as required, that the approach we adopt today “will further the achievement of long-established regulatory goals” to preserve and advance universal service through specific, predictable, and sufficient contribution mechanisms.

28. In addition, section 1 of the Act charges the Commission with responsibility to “make available, so far as possible, to all the people of the United States, \* \* \* a rapid, efficient,

Nation-wide, \* \* \* wire and radio communication service with adequate facilities at reasonable charges.” In light of this statutory mandate, promoting universal service became one of the Commission’s primary responsibilities under the Act even before Congress adopted section 254 in 1996. Before the 1996 Act, the Commission relied exclusively on its Title I ancillary jurisdiction to adopt regulations establishing a fund to further this statutory goal. In *Rural Telephone Coalition v. FCC*, the United States Court of Appeals for the District of Columbia Circuit upheld the Commission’s assertion of ancillary jurisdiction to establish a funding mechanism to support universal service in the absence of specific statutory authority as ancillary to its responsibilities under section 1 of the Act to “further the objective of making communications service available to all Americans at reasonable charges.” We conclude that as more consumers begin to rely on interconnected VoIP services for their communications needs, the action we take here ensures that the Commission continues to “further the achievement of long-established regulatory goals” to “make available \* \* \* communication service with adequate facilities at reasonable charges.” Thus, pursuant to our ancillary jurisdiction, we extend USF contribution obligations to providers of interconnected VoIP services.

29. *Implementation.* In this section, we address implementation issues related to our requirement that interconnected VoIP providers contribute to the USF. Because we are expanding the base of contributors, certain entities that in the past have not been required to report interstate and international revenues will now be required to do so. For that reason, we provide a brief overview of our reporting requirements. This Order does not fully explain all of the Commission’s requirements. Interconnected VoIP providers that are new to the USF procedures should familiarize themselves with the Commission’s USF rules and with FCC Forms 499-A and 499-Q Telecommunications Reporting Worksheets and the accompanying instructions.

30. *Identifying Revenues for Reporting Purposes.* Most interconnected VoIP providers offer packages of services to consumers for a single price that include telecommunications, as discussed above, along with CPE and/or features that may be information services. To the extent that an interconnected VoIP provider has

chosen to structure its offerings in this manner, it may use the safe harbors established in the *CPE Bundling Order* to determine the appropriate amount of telecommunications revenues to be reported (as distinguished from revenue derived from non-telecommunications). Interconnected VoIP service providers are not obligated to use either of the safe harbors in the *CPE Bundling Order*, but we emphasize that other allocation methods may not be considered reasonable and will be evaluated on a case-by-case basis in an audit context.

31. Interconnected VoIP providers must report and contribute to the USF on all their interstate and international end-user telecommunications revenues. To fulfill this obligation, interconnected VoIP providers have three options: (1) They may use the interim safe harbor established in this Order; (2) they may report based on their actual interstate telecommunications revenues; or (3) they may rely on traffic studies, subject to the conditions described below.

32. As we recognized in the *Vonage Order*, it is difficult for some interconnected VoIP providers to separate their traffic on a jurisdictional basis. Indeed, many of these VoIP providers have advocated to us in other proceedings that their services are "inherently interstate." Consistent with this advocacy and based on the conclusions in the *Vonage Order*, we find that it would be reasonable for us to treat the interconnected VoIP traffic as 100 percent interstate for USF purposes. Indeed, in another context where providers were unable to separate their interstate telecommunications revenues from other revenues, the Commission found a safe harbor of 100 percent to be reasonable. Nevertheless, we establish a safe harbor that is lower than 100 percent as a convenient alternative for interconnected VoIP providers. Our safe harbor is necessarily the product of line drawing. In adopting a safe harbor we consider what would be an appropriate analogue. One industry report has estimated that 83.8 percent of VoIP traffic in 2004 was either long distance or international and only 16.2 percent was local. Thus, it appears that VoIP traffic is predominantly long distance or international. As such, it is much like wireline toll service which similarly offers interstate, intrastate toll, and international services. In fact as described below, VoIP services are often marketed as a substitute for wireline toll service. The percentage of interstate revenues reported to the Commission by wireline toll providers is 64.9 percent. We therefore find that establishing a

safe harbor of 64.9 percent is reasonable for purposes of this interim action.

33. Moreover, we believe that setting the safe harbor at 64.9 percent is reasonable pending the completion of the accompanying NPRM where we seek comment on whether to change or eliminate all of the safe harbors. To set the safe harbor lower would permit providers that actually provide more interstate service to escape universal service contribution obligations for some of their interstate traffic, thus undermining our actions to preserve and advance the goals of universal service. Furthermore, to the extent the safe harbor percentage is higher than some providers' actual interstate use, providers may instead contribute to the fund based on actual revenue allocations or by conducting a traffic study, as described below. We encourage interconnected VoIP providers to explore these more precise avenues for determining the jurisdictional nature of their revenues.

34. We do not believe that the percentage used as the wireless safe harbor would serve as a reasonable safe harbor for interconnected VoIP. Indeed, the record reflects that interconnected VoIP service is often marketed as an economical way to make interstate and international calls, as a lower-cost substitute for wireline toll service. For purposes of a safe harbor, it is reasonable to account for the many customers who purchase these services to place a high volume of interstate and international calls, and benefit from the pricing plans the providers offer for such services. We believe that these characteristics differentiate it from wireless service. Accordingly, we find that the interconnected VoIP safe harbor should be substantially higher than the wireless safe harbor in order to properly capture interstate revenues.

35. While, as stated above, interconnected VoIP providers may report their actual interstate telecommunications revenues, we recognize that some interconnected VoIP providers do not currently have the ability to identify whether customer calls are interstate and therefore subject to the section 254(d) contribution requirement. Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries. Therefore, an interconnected VoIP provider may rely on traffic studies or the safe harbor described above in calculating its federal universal service contributions. Alternatively, to the extent that an

interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls. Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected VoIP provider.

36. In lieu of using the interim safe harbor or reporting actual interstate telecommunications revenues, interconnected VoIP providers may rely on traffic studies, as noted above, and as wireless carriers may do. The record indicates that traffic studies are a feasible option for providers of interconnected VoIP service. However, before it can begin to base its USF contributions on a traffic study, an interconnected VoIP provider must submit its proposed traffic study to the Commission for approval. While prior Commission approval of traffic studies is not required for wireless carriers, we have nonetheless identified concerns in the wireless context with the use of traffic studies as a replacement for reporting actual revenues, and we now require wireless carriers to submit their traffic studies to the Commission and to USAC. If we were to allow interconnected VoIP providers to rely on unapproved traffic studies, we would risk extending the problems we have identified with the use of traffic studies by wireless carriers to a new technology, possibly creating unforeseen problems. For these reasons, we find it appropriate to require prior Commission approval of any traffic study on which an interconnected VoIP provider proposes to rely. Until the Commission has approved an interconnected VoIP provider's proposed traffic study, that provider may use the interim safe harbor. We may extend this treatment to wireless traffic studies in the future, but we decline to do so today. While there would be a benefit to parity of requirements between wireless and interconnected VoIP providers, a pre-approval requirement for wireless traffic studies would be disruptive to wireless contributors who, unlike interconnected VoIP providers, are already relying on the current regime.

37. We take one additional interim action here to ensure the health of the USF pending broader reform. As we stated earlier, we have not yet classified

interconnected VoIP as either a telecommunications service or an information service. Because we have not yet made that classification, some interconnected VoIP providers may hold themselves out as telecommunications carriers, but others do not, considering themselves instead to be "end users." Carriers that provide telecommunications service inputs to the latter group of interconnected VoIP providers therefore have been reporting the resulting revenues as end-user revenues and including them in their bases. Because we do not classify interconnected VoIP today, nor do we attempt to quantify the magnitude of USF contributions from carriers that supply wholesale inputs to interconnected VoIP providers, carriers supplying telecommunications services to interconnected VoIP providers who are not themselves carriers should continue to include the revenues derived therefrom in their own contribution bases for two full quarters after the effective date of this Order. Wholesale carriers may not exclude these revenues by invoking the "carrier's carrier" rule during this interim period. To the extent required, we waive here Commission rule 54.706(b) for the duration of this requirement.

38. We recognize that, by requiring on an interim basis that both the underlying carrier and the interconnected VoIP provider contribute based (in part) on the revenues derived from providing the underlying transmission, the Fund may receive contributions from telecommunications revenues associated with the same facilities two times. We emphasize that this is a temporary measure, and we do not take this step lightly. We are concerned, however, that if carriers are permitted to invoke the carrier's carrier rule immediately to exclude revenues from interconnected VoIP providers, the result could be a net decrease in the Fund in the short term. Such a result would be inconsistent with our obligation to ensure a sufficient and sustainable Fund and to preserve and advance universal service. By continuing to require contributions from carriers supplying transmission facilities to interconnected VoIP providers for an additional two quarters, we eliminate any risk of decreasing the Fund while we implement contribution obligations for interconnected VoIP providers. Further, we find nothing in section 254 of the 1996 Act that prohibits this interim approach.

39. *Reporting Requirements.* Providers of interconnected VoIP services will follow the same basic USF

reporting procedures as other providers of interstate and international telecommunications, using the same forms and filing instructions. Contributors to USF report historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on FCC Form 499-Q. Interconnected VoIP service providers will be required to file FCC Form 499-Q beginning on August 1, 2006. Contributors report gross-billed and actual collected end-user interstate and international revenues on FCC Form 499-A on April 1 of each year. Interconnected VoIP service providers will be required to file a completed FCC Form 499-A beginning on April 1, 2007. Interconnected VoIP providers who will be submitting the FCC Form 499-Q for the first time because of this Order are not required to complete lines 115-118 on the Form until they submit the Form for the February 1, 2007 deadline. All other portions of the Form must be completed beginning with the submissions due August 1, 2006.

40. Under Commission rules, a provider of interstate and international telecommunications whose annual universal service contribution is expected to be less than \$10,000 is not required to contribute to the USF, or to file a Telecommunications Reporting Worksheet unless it is required to contribute to other support and cost recovery mechanisms. Interconnected VoIP providers that satisfy this *de minimis* exemption need not contribute to the Fund. We find, however, that it is appropriate to require all providers of interconnected VoIP services—including those that satisfy the *de minimis* exemption—to register with the Commission in order to facilitate our enforcement of the obligations the Commission has imposed in this Order on providers of interconnected VoIP services. In order to fulfill this reporting requirement, every interconnected VoIP provider that has not already registered with the Commission (and designated an agent for service of process) must complete and file an FCC Form 499-A with blocks 1, 2, and 6 completed. Providers should refer to the instructions on the revised FCC Form 499-A for additional details on how to complete this registration requirement. Interconnected VoIP providers will receive an FCC Registration Number (FRN) when they register with the Commission. Because providers must have an FRN in order to submit required USF filings, it is the responsibility of the interconnected VoIP provider to register with the Commission and obtain an

FRN prior to the August 1, 2006 deadline for filing FCC Form 499-Q.

41. Finally, interconnected VoIP providers must comply with the Commission's rules with respect to recovering USF contributions from their customers. Contributors may choose to recover part or all of their universal service contributions from their customers, but they are prohibited from marking up universal service line-item amounts above the relevant contribution factor.

42. *Technical Matters.* On our own motion, we amend section 54.5 of our rules to correct a typographical error. Section 54.5 currently defines "contributor" as "an entity required to contribute to the universal service support mechanisms pursuant to § 54.703." Section 54.706 addresses which entities are required to contribute to the universal service support mechanisms, not section 54.703. Accordingly, we amend section 54.5 to define "contributor" as "an entity required to contribute to the universal service support mechanisms pursuant to § 54.706." Further, in the sections of our rules that we revise to conform to this Order, we also remove references to our contribution methodology prior to April 1, 2003 which are now outdated. Because these rule changes are non-substantive, the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.

#### **Final Paperwork Reduction Act Analysis**

43. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due September 8, 2006.

#### **Final Regulatory Flexibility Analysis**

44. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM in CC Docket No. 96-45 and into the NPRM in WC Docket No. 04-36. The Commission sought written public comment on the proposals in the NPRMs, including comment on the IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding

sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

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

45. In the Report and Order (Order), the Commission makes interim modifications to the existing approach for assessing contributions to the federal universal service fund (USF or Fund) in order to maintain the stability and sufficiency of the Fund in the near-term in response to marketplace changes while we continue to examine more fundamental reform. Under the revised approach, the Commission raises the interim wireless safe harbor from its current 28.5 percent level to 37.1 percent. The Commission also establishes universal service contribution obligations for providers of interconnected voice over Internet Protocol (VoIP) service. As detailed in the Order, interconnected VoIP providers must report and contribute to the USF on all their interstate and international end-user telecommunications revenues. To fulfill this obligation, interconnected VoIP providers have three options: (1) They may use the interim safe harbor of 64.9 percent established in this Order; (2) they may report based on their actual interstate telecommunications revenues; or (3) they may rely on traffic studies. The interim changes made in the Order are essential for securing the viability of universal service—a fundamental goal of communications policy as expressed in the Communications Act—in the near-term.

46. The interim modifications adopted in the Order respond to marketplace developments and minimize the impact of changes to the current system on consumers, service providers, and universal service administration, while we continue to work towards more fundamental reform. Specifically, the revised approach to USF contributions will ensure that all interstate telecommunications carriers and providers of telecommunications contribute, on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service. For example, applying universal service obligations to providers of interconnected VoIP service is consistent with the principle of competitive neutrality. In the *Universal Service First Report and Order*, the Commission established competitive neutrality as a principle to guide the development of universal service policies. Competitive neutrality means that “universal service support

mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.” The Commission has recognized that interconnected VoIP service is increasingly seen by consumers as a potential substitute for traditional telephone service. As interconnected VoIP service continues to grow, and to attract subscribers who previously relied on traditional telephone service, it becomes increasingly inappropriate to exclude interconnected VoIP service providers from universal service contribution obligations.

47. The interim modifications will provide near-term stability and sustainability for the Fund by responding to the fundamental changes in the telecommunications market while retaining the essential elements of the current approach to USF contributions. They also ensure that telecommunications carriers and providers of telecommunications contribute on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service. For these reasons, the Order revises the existing approach for assessing contributions to the Fund.

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

48. On June 15, 2006, the Office of Advocacy of the U.S. Small Business Administration (SBA) filed an *ex parte* letter with the Commission. In its letter, the SBA challenges the sufficiency of the Commission’s IRFA released with the notice of proposed rulemaking in the *IP-Enabled Services* proceeding. The SBA states that the item itself “did not propose specific regulations and the IRFA released with the proposal reflected this lack of specificity.” The SBA states that the *IP-Enabled Services* IRFA “makes no conclusions regarding which regulations, if any, would apply to any entity, including small entities.” This analysis leads SBA to conclude that the Commission has not analyzed the economic impact of the actions taken in the Order on small businesses, and to recommend that the Commission defer action and complete an IRFA that it believes would meet the requirements of the RFA.

49. We disagree with SBA that the Commission should postpone taking action in this proceeding to change the safe harbor percentage for wireless carriers and to impose universal service obligations on interconnected VoIP

providers, and instead issue a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives. We believe the additional steps suggested by SBA are unnecessary because small entities already have received sufficient notice of the issues addressed in today’s Order and because the Commission has considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities, and, to the extent feasible, has implemented less burdensome alternatives. Moreover, SBA’s proposal to postpone and thus further delay these interim actions is antithetical to the core purpose of the Order, which is to ensure the near-term stability and sufficiency of the USF.

50. The Commission also received some general small business-related comments. Some commenters, for example, asserted that a connection-based methodology would be inequitable and burdensome for small businesses, particularly with respect to assessment of multi-line business connections based on the proposed tiers of capacity outlined in the *Further Notice*. Other commenters maintained that a *de minimis* exemption was essential to any contribution system adopted by the Commission. To the extent that these commenters’ concerns are implicated by today’s actions, they are discussed throughout the Order.

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

51. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

52. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes



annually in its *Trends in Telephone Service* report. According to data in the most recent report, there are 5,679 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

53. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

54. We have perhaps been overbroad in our list of entities directly affected, below, in an effort to encourage comment.

a. Wireline Carriers and Service Providers

55. 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.

56. *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.

57. *Competitive Local Exchange Carriers (CLECs), 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, 37 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.

58. *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.

59. *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.

60. *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.

61. *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.

62. *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.

63. *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, an estimated 88 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

64. *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 beginning of January 2005, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789 and the number of 877 numbers assigned was 4,805,568. 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 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; and 4,805,568 or fewer small entity 877 subscribers.

b. International Service Providers

65. *Satellite Telecommunications and Other Telecommunications.* There is no small business size standard developed specifically for providers of

international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.

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

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

c. Wireless Telecommunications Service Providers

68. 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.

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

70. *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. 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. Thus, under this category and size standard, the majority of firms can be considered small.

71. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees. According to Commission data, 375 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 370 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, 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.

**72. 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, held in April 1997, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

**73. 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, 437 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 260 of these are small under the SBA small business size standard.

**74. 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 "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

**75. 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.

**76. 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. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

**77. 220 MHz Radio Service—Phase II Licensees.** 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.

#### 78. 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.

79. *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.

80. *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.

81. *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.

82. *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.

83. *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.

84. *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.

85. *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.

86. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). 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 this 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 ITFS. There are presently 2,032 ITFS 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.

87. *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.

88. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits

each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

89. *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. 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.

90. *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.

d. Cable and OVS Operators

91. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local

television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material." The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: All such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small.

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

93. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

94. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, 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 \$13.5 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, D.C., 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.

#### e. Internet Service Providers

95. *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 \$23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 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.

#### f. Other Internet-Related Entities

96. *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 \$6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under \$5 million, and an additional 15 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.

97. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily \* \* \* provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 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.

98. *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 \$6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under \$5 million, and an additional four 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.

99. *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 census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms small entities that may be affected by our action.

100. *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 \$23 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 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under \$10 million, and an additional 403 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 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under \$10 million, and an additional 565 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 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under \$10 million, and an additional 101 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.

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

101. As discussed in detail in the Order, the modifications to the reporting system only expand the scope of entities that are required to report to include interconnected VoIP service providers. Under the modified reporting system,

contributors will continue to report projected and historical revenues on Form 499–Q and their annual revenues on the Form 499–A. Failure to file the required form by the applicable deadline, or failure to file accurate information on the form, could subject a contributor to enforcement action. In addition, we note that we retain the requirement for an officer to certify to the truthfulness and accuracy of the Form 499 submitted to USAC. To ensure that contributors report correct information, we also require all contributors to maintain records and documentation to justify the information reported in the Form 499, and to provide such records and documentation to the Commission and to USAC upon request.

102. Our action today raises the wireless safe harbor and imposes new USF contribution obligations on interconnected VoIP providers. We note, however, that neither wireless providers nor interconnected VoIP providers are required to use the safe harbors established in this order; they have the additional options of basing their contributions on actual interstate and international revenues, or of relying on a traffic study. We emphasize once again that the interim actions adopted in the Order are necessary to ensure that all interstate telecommunications carriers and providers of telecommunications contribute, on an equitable, competitively neutral, and nondiscriminatory basis, to our mechanism for preserving and advancing universal service.

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

103. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance 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.”

104. With respect to wireless providers, the Commission considered and rejected setting the interim safe harbor higher than the 37.1 percent established in this Order. Similarly, the Commission considered and rejected a requirement that interconnected VoIP

providers contribute on 100 percent of their end-user revenues. Thus both wireless and interconnected VoIP providers—especially smaller entities—benefit from being able to use a lower safe harbor to report their interstate and international end-user revenues.

105. The Commission’s application of the *de minimis* exception to interconnected VoIP providers remains the best means of minimizing the impact on small entities of adopting our interim changes to USF contribution methodology. The *de minimis* exception protects small businesses and ensures that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. As noted by several commenters, the *de minimis* exemption is critical to curtailing the potential administrative costs of contributing for small entities.

106. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register**.

#### Ordering Clauses

107. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), this Report and Order and Notice of Proposed Rulemaking in WC Docket No. 06–122, CC Docket No. 96–45, CC Docket No. 98–171, CC Docket No. 90–571, CC Docket No. 92–237/NSD File No. L–00–72, CC Docket No. 99–200, CC Docket No. 95–116, CC Docket No. 98–170, and WC Docket No. 04–36 is adopted, part 54 of the Commission’s rules, 47 CFR Part 54, is amended as set forth in Appendix A, Form 499–A is amended as set forth in Appendix C, and Form 499–Q is amended as set forth in Appendix D. These rules contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

108. *It is further ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), any mobile wireless provider that uses a

traffic study to report actual interstate revenue data for universal service contribution purposes shall submit the traffic study to the Commission and to USAC.

109. It is further ordered that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 202, 218–220, 254, and 303(r), any provider of interconnected VoIP service that proposes to use a traffic study to report actual interstate revenue data for universal service contribution purposes shall petition the Commission for approval of its proposed traffic study.

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

**List of Subjects in 47 CFR Parts 1 and 54**

Interconnected voice over Internet protocol services, Communications, Telecommunications, Telephone, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

**Final Rules**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 54 as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Amend § 1.47 by revising paragraph (h) to read as follows:

**§ 1.47 Service of documents and proof of service.**

\* \* \* \* \*

(h) Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier or interconnected VoIP provider in any proceeding before the Commission.

Such designation shall include, for both the carrier or interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier or interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier or interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier or interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau’s Market Disputes Resolution Division. Such carriers and interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the **Federal Register**, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier or interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers and interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau’s Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier or interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier or interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

**PART 54—UNIVERSAL SERVICE**

■ 3. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 4. Amend § 54.5 by revising the definition of “contributor” and adding the definition of “interconnected VoIP provider” in alphabetical order to read as follows:

**§ 54.5 Terms and definitions.**

\* \* \* \* \*

*Contributor.* The term “contributor” shall refer to an entity required to contribute to the universal service support mechanisms pursuant to § 54.706.

\* \* \* \* \*

*Interconnected VoIP Provider.* An “interconnected VoIP provider” is an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules.

\* \* \* \* \*

■ 5. Amend § 54.706 by revising paragraphs (a) introductory text, (a)(16), (a)(17), by adding paragraph (a)(18), and by revising paragraphs (b) and (c) to read as follows:

**§ 54.706 Contributions.**

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms. Certain other providers of interstate telecommunications, such as payphone providers that are aggregators, providers of interstate telecommunications for a fee on a non-common carrier basis, and interconnected VoIP providers, also must contribute to the universal service support mechanisms. Interstate telecommunications include, but are not limited to:

\* \* \* \* \*

- (16) Resale of interstate services;
- (17) Payphone services; and
- (18) Interconnected VoIP services.

(b) Except as provided in paragraph (c) of this section, every entity required to contribute to the federal universal service support mechanisms under paragraph (a) of this section shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions.

(c) Any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall



contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in § 54.711 and shall include all of that entity's affiliated providers of interstate and international telecommunications and telecommunications services.

\* \* \* \* \*

■ 6. Amend § 54.708 by adding a new sentence after the first sentence to read as follows:

**§ 54.708 De minimis exemption.**

\* \* \* The foregoing notwithstanding, all interconnected VoIP providers, including those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet. \* \* \*

■ 7. Amend § 54.712 by revising the section heading and paragraph (a) to read as follows:

**§ 54.712 Contributor recovery of universal service costs from end users.**

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[I.D. 070306A]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Texas Closure**

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

**ACTION:** Adjustment of the ending date of the Texas closure.

**SUMMARY:** NMFS announces an adjustment to the ending date of the

annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. For 2006, the closure began on May 15, and will end at 30 minutes after sunset on July 10. The Texas closure is intended to prohibit the harvest of brown shrimp during their major emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

**DATES:** The EEZ off Texas is open to trawl fishing from 30 minutes after sunset on July 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, 727-824-5305; fax: 727-824-5308; e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The EEZ off Texas is normally closed to all trawling each year from 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15. The regulations at 50 CFR 622.34(h) describe the area of the Texas closure and provide for adjustments to the beginning and ending dates by the Regional Administrator, Southeast Region, NMFS, under procedures and restrictions specified in the FMP.

The beginning and ending dates of the Texas closure are based on biological sampling by Texas Parks and Wildlife Department (TPWD). The closure date is established based on projected times that brown shrimp in Texas bays and estuaries will reach a mean size of 90 mm, and begin strong emigrations out of the bays and estuaries during maximum duration ebb tides. The waters off Texas are re-opened to shrimping when projections indicate that brown shrimp will reach a mean size of 112 mm, in concurrence with maximum duration ebb tides. Biological data collected by TPDW indicate that the criteria to end the Texas closure will be met on July 10, 2006. Accordingly, the time and date for ending the Texas closure is changed from 30 minutes after sunset on July 15, 2006, to 30 minutes after sunset on July 10, 2006.

**Classification**

This action is authorized by 50 CFR 622.34(h)(2) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 3, 2006.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 060216045-6045-01; I.D. 070506A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 Pacific ocean perch total allowable catch (TAC) in the Eastern Aleutian District of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 5, 2006, through 2400 hrs, A.l.t., December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI is 2,849 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).