

documentation identified in paragraphs (b)(4) through (b)(7) of this section.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90; DA 13-598]

Survey of Urban Rates for Fixed Voice and Fixed Broadband Residential Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau and the Wireless Telecommunications Bureau adopt the form and content for a survey of urban rates for fixed voice and fixed broadband residential services, which the Commission will use to implement universal service reforms adopted as part of the *USF/ICC Transformation Order*.

DATES: Effective May 17, 2013. This *Order* contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing their effective dates.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Assistant Division Chief, at 202-418-0626, Industry Analysis & Technology Division, Wireline Competition Bureau. For additional information concerning the PRA information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Judith B. Herman at 202-418-0214.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's *Urban Rates Survey Order* in WC Docket No. 10-90; DA 13-598, released on April 3, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 Twelfth Street SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or

call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Synopsis of Reconsideration Order

1. On November 18, 2011, the Commission released the *USF/ICC Transformation Order and FNPRM*, 76 FR 73830, November 29, 2011, which comprehensively reforms and modernizes the universal service and intercarrier compensation systems. In that *Order*, the Commission directed the Wireline Competition Bureau and Wireless Telecommunications Bureau (Bureaus) to conduct a survey of residential urban rates for voice services. Specifically, the Commission directed the Bureaus to "develop a methodology to survey a representative sample of facilities-based fixed voice service providers taking into account the relative categories of fixed voice providers as determined in the most recent FCC Form 477 data collection." The Commission also delegated "authority to conduct an annual survey of urban broadband rates, if necessary, in order to derive a national range of rates for broadband service" and "to monitor urban broadband offerings, including by conducting an annual survey, in order to specify an appropriate minimum for usage allowances and to adjust such a minimum over time." In the accompanying *FNPRM*, the Commission sought comment on various issues associated with determining reasonable comparability for voice and broadband rates.

2. In response to the Commission's direction, the Wireline Competition Bureau (Bureau) released a Public Notice, 77 FR 52279, August 29, 2012, seeking comment on the format and content of a proposed survey of urban rates for fixed voice and fixed broadband residential services. The Bureau also sought to further develop the record on how we could use the data collected in the survey to determine the local voice rate floor and the reasonable comparability benchmarks for fixed voice and fixed broadband services.

3. In the *USF/ICC Transformation Order and FNPRM*, the Commission asked if it should "separately collect data on fixed and mobile voice telephony rates." In the Public Notice, we sought more detailed comment specifically on the development of a survey for fixed services. We now adopt

a survey that collects data for fixed services.

4. We adopt a fixed-services specific survey because we have decided not to create a national average urban rate that represents a blended rate derived from both fixed and mobile data. We conclude that the differences in rate plans and other attributes of fixed and mobile services would make it inordinately difficult to create a unified benchmark. Accounting for all of these differences would require collecting substantial additional information as well as making numerous assumptions that could greatly complicate the development of the national average. For example, fixed and mobile voice offerings often differ in pricing structure, with fixed voice providers charging for unlimited calling in the local calling area and mobile providers charging for a bucket of any-distance minutes. Similarly, fixed and mobile broadband offerings typically differ substantially in speed and capacity allowances. Generating a blended fixed and mobile rate would require accounting for the various innate properties of each service to make them "comparable." Such a comparison would require assumptions about which service characteristics might be adjusted, and collection and analysis of data to understand customers' valuation of such characteristics, both of which would be resource intensive.

5. In other respects, the Bureaus are continuing to consider the best approach to implementing the reasonable comparability requirements with respect to supported fixed and mobile services. In particular, some nationwide providers have argued that they should be able to meet the Commission's reasonable comparability benchmarks by certifying that they charge the same prices in rural as urban areas. We will address such arguments in a future order.

6. Because we anticipate announcing reasonable comparability benchmarks derived from survey data after the deadline for the July 1, 2013 ETC annual reports, ETCs (both fixed and mobile) subject to section 54.313 of the Commission's rules are not expected to make any certification that their voice service rates are reasonably comparable to the national average urban voice rate, as required in section 54.313(a)(10), in their 2013 annual reports. Instead, this requirement will be initially implemented in the 2014 annual reports.

7. *Survey Format and Sample Selection.* As proposed in the Public Notice, we intend to implement this survey through an online reporting form

accessible to those urban providers of fixed voice and broadband services that are chosen to participate. The Administrator, the Universal Service Administrative Company, may assist in administering the survey. We will select urban providers using FCC Form 477 data so as to create a statistically valid sample that is representative of the relative proportion of fixed terrestrial providers for the purpose of setting a reasonable comparability benchmark for fixed voice and fixed broadband services and a rate floor for fixed voice service. Separate, independent samples will be chosen for the fixed voice and fixed broadband sections of the survey. As further proposed in the Public Notice, we will survey a statistically valid sample generated from all fixed terrestrial providers—regardless of regulatory status or technology—that serve urban census tracts in Metropolitan Statistical Areas (MSAs) across the country. We will direct each provider chosen as part of the sample to indicate prices it charges within the identified Census tract.

8. Although no commenters objected to this approach, the National Exchange Carrier Association, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, Eastern Rural Telecom Association, and the Western Telecommunications Alliance (together, NECA) urge the us to include within the survey sample in each MSA all types of providers, including providers that serve the whole MSA and providers that serve only a portion of the MSA. We agree. As proposed in the Public Notice, we will survey a statistically valid sample generated from all fixed terrestrial providers in each MSA, and we will not exclude providers based on the size of their service area within an MSA.

9. Consistent with our proposal in the Public Notice, we define “urban” for the purposes of this survey as all 2010 Census urban areas and urban clusters that sit within an MSA, which includes approximately 70–80 percent of the U.S. population. We will use Commission data, primarily collected from Form 477 submissions, to determine which providers are serving urban census tracts—this is the most efficient way to identify service providers in particular areas. No commenter objected to this proposal. As further proposed in the Public Notice, we will provide hyperlinks in the survey instrument so the respondent can easily associate the Census tract specified in the survey with a physical location within the respondent’s service area.

10. We require that a provider with multiple operating companies within the same Census tract answer the survey questions for each operating company. One commenter requests that a survey respondent need only report data for one operating company in those cases where the survey respondent has more than one operating company in a particular tract. We are concerned, however, that allowing survey respondents to select from among multiple operating companies to report data could inadvertently introduce statistical bias in the survey results. Once survey results have been collected, we will select from among the reported companies in each Census tract in a manner that maintains statistical integrity.

11. As suggested by AT&T, we include language in the survey instructions specifying that providers should include in their responses information regarding all-distance voice services and broadband services even if those services are provided not just by the respondent, but by the respondent and an affiliate. Particularly for local telephone operating companies, there may be numerous instances in which these entities provide all-distance voice service plans and/or broadband services in conjunction with an affiliate and failing to capture these offerings could result in substantially incomplete data.

12. *Fixed Voice Offerings (Types of services)*. As proposed in the Public Notice, we require providers to report separately stand-alone, non-discounted rates for their unlimited or flat-rate local service, unlimited all distance service, and measured or messaged local service. If the provider does not offer any of these services, it would indicate this and not report data for that category. No commenter disagreed with this proposal. In addition, as the Wireline Competition Bureau proposed, we require data for circuit switched and facilities-based VoIP services to be collected separately. Further, we state explicitly in the instructions that grandfathered services and pricing are not to be reported in the survey.

13. *Fixed Voice Offerings (Bundled services)*. We decline to include bundled pricing in the survey at this time. In response to the Public Notice, NECA suggests that the survey also should collect data on separately-identified service rates in bundled service offerings. NECA argues that the majority of customers now purchase bundles and that because bundled rates are generally lower than a la carte rates, excluding bundles could create an inflated rate floor. Although we recognize that consumers may pay

somewhat lower rates for fixed voice services when those services are purchased as part of a bundle, carriers today typically have discretion in how they allocate the price of a bundle among the services making up the bundle. Companies may base these allocations on regulatory requirements, state and local tax requirements or company-specific marketing initiatives. We are concerned about developing a rate floor and benchmark based on carrier self-reported allocations using inconsistent methodologies. Moreover, in the *USF/ICC Transformation Order*, the Commission specifically adopted a minimum rate floor “to avoid over-subsidizing carriers whose intrastate rates are not minimally reasonable.” Because bundles are marketing devices used to induce consumers to purchase additional services based on a discount, benchmarks set based on these prices could be artificially low. We note that the Commission has used data for stand-alone fixed-only service for its rate benchmark in the past.

14. *Fixed Voice Offerings (Non-recurring charges)*. We will collect information regarding non-recurring charges in the initial survey and will determine whether to include this data as part of the benchmark after the survey results have been examined. Some commenters suggest we should not include these charges because such fees are “associated with initiating, extending, modifying, restoring, or repairing service, but are not the fees for the service itself, differ by customer location and other factors that makes including them complex, and are directly linked to marketing plans and are often waived. We agree that such fees can differ substantially among customers depending on location and other factors and that including these charges will add complexity to the survey. Further, we are mindful that non-recurring charges are often part of marketing strategies and may be waived or discounted in order to attract customers. However, we are concerned that there may be cases in which providers offer high non-recurring charges in combination with low recurring charges or allow consumers to pay non-recurring charges on a monthly basis, and that excluding non-recurring charges from the survey would restrict the Bureaus’ ability to evaluate whether such charges would materially impact the outcome when setting the rate floor and reasonable comparability benchmarks.

15. *Fixed Voice Offerings (Recurring charges)*. In the *USF/ICC Transformation Order*, the Commission determined that the rate floor should be

based upon “end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges).” Therefore, notwithstanding arguments that fees, taxes, and surcharges beyond the provider’s control should not be included in the survey, we are required to collect data on state SLCs, state universal service fees, and mandatory extended area service (EAS) charges. We conclude that there is a value in collecting information on such fees as individual line items on the survey in order to monitor over time the extent to which states impose fees for state universal service funds and mandatory EAS.

16. We have modified the proposed survey to include all other recurring surcharges, taxes, and Telecommunications Relay Service (TRS) charges as a single, aggregated survey question. This information is relevant to our development of reasonable comparability benchmarks. Although we acknowledge that these charges can vary by area and including them may raise the complexity of the survey somewhat, these charges may be a significant portion of customers’ monthly bills. We decline to include touch tone charges as a separate item in the survey at this time. Several of the larger incumbent carriers eliminated separate touchtone charges more than a decade ago, and we are not aware of a sufficiently large number of providers charging separately for touch tone service today to warrant its inclusion as a separate entry. To the extent some providers still charge separately for touch tone, they should report such charges in the line entitled “Total of all other surcharges, taxes, TRS, and touch tone charges.” For multiple, customer-chosen EAS charges, we include language in the survey instructions to specify how the provider should separately report mandatory and voluntary EAS charges.

17. *Fixed Voice Offerings (Local calling areas)*. We decline to collect information regarding calling area size and scope in the survey. Several commenters argue that the survey should gather this information because the typically smaller number of persons within a calling area in rural areas as compared to urban calling areas must be taken into account in calculating the rate floor. In adopting the rate floor rule, the Commission was seeking to ensure that consumers in high-cost areas pay some minimum amount to support the cost of the network before turning to the federal support mechanism, which ultimately is borne by consumers across the nation. As the Commission stated,

“we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.” Calling areas (like local retail rates) are established by the states based on factors such as the attributes and needs of local communities and are not necessarily related to the cost of service. Considering local calling areas in the rate floor analysis would be inconsistent with the Commission’s efforts to avoid subsidizing artificially low local rates.

18. *Fixed Voice Offerings (Multiple rate zones within Census tract)*. We make a minor modification to the proposal in the Public Notice to address the situation in which providers may have multiple zones that have different rates and fees within a single Census tract. To avoid confusion or the possibility that providers will use varying methods to determine an average rate among multiple zones, we include in the survey instructions that indicate that if a provider has multiple rates or other fees/taxes within a single, surveyed Census tract, the provider should report all of the rates for that Census tract separately. The Bureau will then determine which rates should be included in the survey in a manner that will avoid introducing statistical bias.

19. *Fixed Broadband Offerings (Types of services)*. We require providers to report all residential, non-discounted rates for all standalone service speeds above 200 kbps offered in the specified Census tract. This is a change from the original proposal that offerings be placed in one of four service tiers. We agree with commenters that the proposed categories in the Public Notice might not accommodate the variety of plans currently offered. The modified survey will ensure we have an understanding of the speeds available in the marketplace and will be easier for respondents to complete.

20. We conclude that requiring survey respondents to use the speed categories in FCC Form 477 would involve more time and resources for filers than necessary for the Bureau to fulfill its obligations. Although NECA claims that this will minimize the burden on providers, we are not persuaded. For Form 477, providers report existing subscriber counts for seventy-two download and upload speed combinations. Because Form 477 requires providers querying their existing customer databases for subscriber counts and the rate survey requires providers to report rates that would be offered to a hypothetical prospective customer, we see little

reason to believe using the Form 477 speed tiers would reduce burden.

21. We conclude that requiring providers to report offerings both above and below the 4 Mbps down/1 Mbps up standard is necessary to fulfill our obligations. We disagree with the suggestions of several commenters that the Bureau should limit the survey to inquire solely about offerings near 4 Mbps down/1 Mbps up because only this speed is eligible for Connect America Fund support and all other offerings are therefore irrelevant or beyond the Commission’s authority. In the *USF/ICC Transformation Order*, the Commission concluded that it “must also lay the groundwork for longer-term evolution of CAF broadband obligations, as we expect technical capabilities and user needs will continue to evolve. We therefore commit to monitoring trends in the performance of urban broadband offerings through the survey data we will collect and rural broadband offerings through the reporting data we will collect.” The Commission thus has directed the Bureaus to conduct a survey of not just services that are close to 4 Mbps down/1 Mbps up broadband standard, but also of trends in the broadband market. To fulfill this obligation, we must obtain information on a range of broadband speeds available in the market.

22. *Fixed Broadband Offerings (Capacity allowances)*. We adopt our proposal that providers report on any capacity allowances and what actions are taken when the capacity allowance is exceeded. We specifically identified possible actions to include overage charges, blocking traffic, and rate limiting. No commenter objected to including capacity allowance in our survey, and we conclude that it is necessary to know the allowances (if any) associated with each service offering at a given price. We adopt the suggestion of the Alaska Rural Coalition that the Bureau also request information regarding provider roll-over offerings—“the provider practice of allowing customers to ‘roll over’ their unused capacity for a month to apply to future months of service.” We agree that it would be useful to collect information on roll-over practices and add “roll over” as an option in the capacity allowance question.

23. *Fixed Broadband Offerings (Bundling, recurring, and non-recurring charges)*. We conclude at this time that respondents will not be required to include in their survey responses rates for any service that cannot be purchased on a stand-alone basis. As explained above for voice service, determining how to allocate the price of a bundled

service among its components is difficult, and bundled service providers allocate pricing using different methodologies. Seeking data on prices for offerings not actually offered in the marketplace would likely skew the survey results.

24. We will collect information regarding non-recurring charges associated with broadband services and determine whether to include this data in the broadband benchmark once we have evaluated the initial survey results. We conclude it is reasonable to gain a better understanding of the total price that consumers are paying, including non-recurring charges, before setting the broadband comparability benchmark. Therefore, we will adopt the recurring taxes, fees, and surcharge questions as proposed in the Public Notice.

25. *Non-Filers*. We will contact directly any provider that is sent a survey notification that does not complete the online survey form within 30 days. Compliance with the rules adopted in this *Order* is mandatory, and failure to comply may lead to enforcement action, including forfeiture penalties, pursuant to the Communications Act of 1934, as amended, and other applicable law.

Filing Procedures

26. Once OMB has completed its review of the survey collection requirements adopted today, we will issue a public notice providing detailed instructions and announcing when the survey notifications will be distributed.

Congressional Review Act

27. The Commission will send a copy of this *Urban Rate Survey Order* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

Paperwork Reduction Act

28. This *Urban Rates Survey Order* contains new information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Urban Rate Survey Public Notice*. The Bureau sought written public comment on the proposals in the *Urban Rates*

Survey Public Notice, including comment on the IRFA. No comments were received addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

30. *Need for and Objective of the Order*. The *Order* adopts a survey of urban rates for fixed voice and fixed broadband residential services for purposes of implementing various reforms adopted as part of the *USF/ICC Transformation Order*. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband service. As discussed in the *Order*, the rate survey will be used to develop benchmarks and rate floors to insure supported providers' rates are not unreasonably high or unnecessarily low.

31. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*. No parties have raised significant issues in response to the IRFA.

32. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

33. *Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply*. 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 and policies adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

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

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

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

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

38. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under

that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

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

40. *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 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS

licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 license.

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

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

43. *Cable System Operators*. The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate 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.

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

some of the OVS operators may qualify as small entities.

45. *Internet Service Providers*. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the *Order*.

46. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*. In the *Order*, the Bureau adopts a survey of urban rates for fixed voice and fixed broadband residential services. Specifically, it requires reporting by a number of entities that are included in the sample, including some small entities, of advertised rates and product offerings.

47. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*. 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.

48. The requirements adopted in the *Order* comprise an efficient data collection process that imposes the smallest burden on fixed voice and fixed broadband providers that still allows the Commission to gather the necessary data to meet the goals of the *USF/ICC Transformation Order*. The rate survey is not anticipated to have a significant economic impact on small entities because the survey will only sample a small number of providers. Furthermore, since the statistical sampling methodology will result in larger entities being more likely to be surveyed, we anticipate small entities will only compose a minor portion of the overall sample. Moreover, the survey only asks about advertised rates and product offerings which should be readily available to entities of any size. Furthermore, any significant economic impact cannot necessarily be minimized through alternatives since the survey sample will already be restricted to a small set of the total population of carriers necessary for generating a statistically valid sample, and the survey will only ask for readily available advertised rates and will be implemented in an easily accessible online format.

49. *Report to Congress*. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress 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.

Ordering Clauses

50. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 5, 201–205, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155, 201–205, 218–220, 254, 303(r), and 403, sections 0.91, 0.131, 0.201(d), 0.291, 0.331 and 1.427 of the Commission's rules, 47 CFR 0.91, 0.131, 0.201(d), 0.291, 0.331, 1.427, and the delegations of authority in paragraphs 85, 99, 106, 114, and 246 of the *USF/ICC Transformation Order*, FCC 11–161, that this *Order* is adopted.

51. *It is further ordered* that this *Order* shall be effective thirty (30) days after publication in the **Federal Register**, except for the requirements contained in paragraphs 11–13, 15–17, 19–20, 23, and 25–26, and Appendix A, which are subject to the Paperwork Reduction Act (PRA). These requirements include new or modified information collection

requirements that require approval by the Office of Management and Budget under the PRA, and shall become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date(s).

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

53. *It is further ordered* that the Commission shall send a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Carol Matthey,

Deputy Bureau Chief, Wireline Competition Bureau.

Appendix A—Urban Rates Survey Form

I. Survey Respondent Information

Provider Name: (pre-populated by FCC)
 Operating Company Name:
 Provider FRN (used on MONTH DAY, YEAR Form 477):
 Provider Study Area Code (if current USF recipient):
 Name of Person Completing Form:
 Contact Phone Number:
 Contact Email Address:
 Name of Certifying Official:
 Certifying Official's Phone Number:
 Certifying Official's Email Address:
 Location for Which Reported Rates Apply: (pre-populated by FCC)

II. Fixed Voice Information

For each specified voice service offered within the Census tract on MONTH DAY, YEAR, respondents must report non-discounted recurring monthly rates and service initiation charges. Detailed instructions for each question section are provided in the particular section. Note that circuit-switched and VoIP service information should be reported separately as indicated.

II.a Rate and Charge Information

In some cases, multiple rates and/or taxes/fees/surcharges may exist for the same service within the Census tract. If this occurs for the specified Census tract, respondents must report the least and most expensive total cost offerings. For example, if two different rates (or other surveyed amounts such as taxes) for flat-rate, local service are applicable to two different portions of the Census tract, then the respondent should indicate that multiple rates exist.

Do multiple rates and/or taxes, fees, surcharges exist for this service offering within the same specified Census tract?
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance

- service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- II.a.1 Monthly Rates**
- For each service offered, report each component of the rate in dollar and cents amounts. If both circuit switched and VoIP service are offered, report information for both services. Reported monthly rates should be standard, non-discounted residential rates. If there are multiple rates or taxes/fees/surcharges for the same service offering in the specified Census tract (indicated by "Yes" in the previous question), report the least total monthly cost offering in Sections 11.a.1 and 11.a.2, and the greatest total monthly cost rates in Sections II.a.3 and II.a.4. If there is only one rate to report, use Sections 11.a.1 and 11.a.2. "All-distance" services include only domestic calling, not international.
- Recurring service charge (without SLC)
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Federal subscriber line charge (SLC), if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Access Recovery Charge (ARC), if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- State SLC, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- State USF charge, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Mandatory extended area service (EAS) charges, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Voluntary EAS charges, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Total of all other surcharges, taxes, and TRS charges. (See instructions for a list of charges to be included.)
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Number of voice calls or message units included in monthly rate if measured service (local service area calls only)
 For Circuit Switched (measured or messaged local service)
 For VoIP (measured or messaged local service)
- Dollar calling allowance for voice calls included in monthly rate if measured service (local service area calls only).
 For Circuit Switched (measured or messaged local service)
 For VoIP (measured or messaged local service)
- Peak period local rate per unit (minute or call/message) once allowance exceed, if measured service.
 For Circuit Switched (measured or messaged local service, indicate if rate is per call or per minute)
 For VoIP Switched (measured or messaged local service, indicate if rate is per call or per minute)
- Off-peak period local rate per unit (minute or call/message) once allowance exceeded, if measured service.
 For Circuit Switched (measured or messaged local service, indicate if rate is per call or per minute)
 For VoIP Switched (measured or messaged local service, indicate if rate is per call or per minute)
- II.a.2 Service Initiation Charges**
- For each item listed, report the *minimum* non-discounted amount a customer would pay for each non-recurring charge. If an item is not offered by the carrier, then mark "N/A."
- Total connection charge for residential service if no premises visit is required.
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Minimum additional charge if drop line and terminal block are needed to connect service. Do not include any inside wiring charges.
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Mandatory surcharges on connection accounted as company revenue
- For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- State, county, and local taxes and surcharges on connection
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Other mandatory connection charges
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- II.a.3 Monthly Rates (Use Only If Multiple Rates)**
- Only use the following rates and charges questions if reporting multiple rates and/or taxes/fees/surcharges for the same service in the same Census tract. Report rates and charges for the greatest total monthly cost offering.
- Federal subscriber line charge (SLC), if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Access Recovery Charge (ARC), if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- State SLC, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- State USF charge, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Mandatory extended area service (EAS) charges, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
 For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)
- Voluntary EAS charges, if any
 For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

service, measured or messaged local service)

For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

Total of all other surcharges, taxes, and TRS charges. (See instructions for a list of charges to be included.)

For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

Number of voice calls or message units included in monthly rate if measured service (local service area calls only)

For Circuit Switched (measured or messaged local service)

For VoIP (measured or messaged local service)

Dollar calling allowance for voice calls included in monthly rate if measured service (local service area calls only).

For Circuit Switched (measured or messaged local service)

For VoIP (measured or messaged local service)

Peak period local rate per unit (minute or call/message) once allowance exceed, if measured service.

For Circuit Switched (measured or messaged local service, indicate if rate is per call or per minute)

For VoIP Switched (measured or messaged local service, indicate if rate is per call or per minute)

Off-peak period local rate per unit (minute or call/message) once allowance exceeded, if measured service.

For Circuit Switched (measured or messaged local service, indicate if rate is per call or per minute)

For VoIP Switched (measured or messaged local service, indicate if rate is per call or per minute)

II.a.4 Service Initiation Charges (Use Only if Multiple Rates)

For each item listed, report the *minimum* non-discounted amount a customer would pay for each non-recurring charge. If an item is not offered by the carrier, then mark "N/A."

Total connection charge for residential service if no premises visit is required.

For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

Minimum additional charge if drop line and terminal block are needed to connect service. Do not include any inside wiring charges.

For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

Mandatory surcharges on connection accounted as company revenue

For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

State, county, and local taxes and surcharges on connection

For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

Other mandatory connection charges

For Circuit Switched (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

For VoIP (unlimited or flat-rate local service, unlimited all-distance service, measured or messaged local service)

III. Internet Service Information

For each standalone, Internet service offered in the specified Census tract on MONTH DAY, YEAR, report information on the service's technology, advertised speeds, capacity allowances (if any), recurring rates, and non-recurring rates. Only report offerings where both the download and upload speeds are at least 200 kbps. Detailed instructions for each question section are provided in the particular section. Report information for each service offering distinguished by speeds, technology, and capacity allowance (if any). In the form, each column represents a separate speed/technology/capacity allowance combination.

III.a Service Information

Report information for each service offering distinguished by *speeds, technology, and capacity allowance* (if any). For example, if in the specified Census tract, unlimited 5/2 Mbps residential service is offered using either DSL or fiber to the home (FTTH), then report the 5/2 Mbps DSL unlimited service in one column and the 5/2 Mbps FTTH unlimited service in the next column. As another example, if a 10/2 Mbps DSL services is offered with either a 100 GB or 200 GB capacity allowance then report the 10/2 Mbps DSL 100 GB service in one column and the 10/2 Mbps DSL 200 GB service in the next column. Use as many columns (and extend as necessary) to report on all offered services. A drop down box allows for selecting the following technologies: DSL, FTTH, cable, fixed wireless, and other. Note that FTTH should only be used if the optical fiber reaches the boundary of the living space, such as a box on the outside wall. Report advertised speeds in Mbps.

Service Technology
Advertised Download Speed (Mbps)
Advertised Upload Speed (Mbps)

III.b Capacity Allowance Information

Report capacity allowances (in GB) applied to the service, if any. A capacity allowance is the monthly data usage level at which the Internet Service provider begins to block, rate-limit, or charge excess fees for additional

data transmission. If a service offering has no specified allowance then enter "Unlimited." For each capacity allowance in place, indicate what action is taken when the allowance is reached. For services with capacity allowances, a drop down box will offer a menu of actions the ISP will take once the limit is reached. These include "Overage Charge," "Blocking Traffic," "Rate-limiting," and "Other." If a capacity allowance is based on a customer's use relative to other customers, report the data amount (in GB) for which the allowance would be reached as of MONTH DAY, YEAR. Also indicate whether un-used data capacity may be "rolled over" from month to month.

Monthly capacity allowance on service (GB), if any. If no specified allowance, choose "Unlimited."

May unused capacity be rolled-over to the next month?

If the capacity allowance is reached, what action is taken?

III.c Rate and Charges Information

In some cases, multiple rates and/or taxes/fees/surcharges may exist for the same service within the Census tract. If this occurs for the specified Census tract, respondents must report the least and most expensive total cost offerings.

Do multiple rates and/or taxes, fees, surcharges exist for the same service offering within the same specified Census tract? (yes/no)

III.c.1 Recurring Rates

For each service offering, report each component of the rate in dollar and cents amounts. Reported monthly rates should be standard, non-discounted residential rates. In some cases, this may be the month-to-month rate available to a customer not eligible for introductory rates, etc. If there are multiple rates or taxes/fees/surcharges for the same service offering in the specified Census tract (indicated by "Yes" in the previous question), report the least total monthly cost offering in the Sections III.c.1 and III.c.2, and the greatest total monthly cost rates in Sections III.c.3 and III.c.4. If there is only one rate to report, use Sections III.c.1 and III.c.2.

Recurring monthly charge
Total of state, local, and municipal taxes
Total of all other mandatory fees and taxes (such as provider surcharges, etc.) passed through.
Surcharges on the service accounted as company revenue (i.e. non-pass through)

III.c.2 Non-Recurring Charges

For each item listed, report the *minimum* amount a customer would pay for each non-recurring charge if the item is required for the Internet service. If an item is not offered by the provider, then mark it as "NA".

Activation or connection *not* requiring a service visit to the premises

Activation or connection requiring a service visit (but assuming the premises is already physically wired)

Does this service require the customer use a modem or other hardware? (yes/no)

If "Yes" for modem and hardware question, what is the purchase price for necessary hardware? (if provider sells such hardware.)

If “Yes” for modem and hardware question, what is the *monthly rental price* for necessary hardware? (if provider rents hardware.)

Computer/laptop hook-up by service technician already making a service visit.

III.c.3 Recurring Rates (Use Only If Multiple Rates)

Only answer the following rates and charges questions if reporting multiple rates and/or taxes/fees/surcharges for the same service in the same Census tract. Report rates and charges for the greatest total monthly cost offering.

Recurring monthly charge

Total of state, local, and municipal taxes

Total of all other mandatory fees and taxes

(such as provider surcharges, etc.) passed through.

Surcharges on the service accounted as company revenue (i.e. non-pass through)

III.c.4 Non-Recurring Rates (Use Only If Multiple Rates)

For each item listed, report the minimum amount a customer would pay for each non-recurring charge if the item is required for the Internet service. If an item is not offered by the provider, then mark it as “NA”.

Activation or connection *not* requiring a service visit to the premises

Activation or connection requiring a service visit (but assuming the premises is already physically wired)

Does this service require the customer use a modem or other hardware? (yes/no)

If “Yes” for modem and hardware question, what is the purchase price for necessary hardware? (if provider sells such hardware.)

If “Yes” for modem and hardware question, what is the *monthly rental price* for necessary hardware? (if provider rents hardware.)

Computer/laptop hook-up by service technician already making a service visit.

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BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002, 1011, 1108, 1109, 1111, and 1115

[Docket No. EP 699]

Assessment of Mediation and Arbitration Procedures

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board or STB) adopts regulations that allow the Board to order parties to participate in mediation in certain types of cases and modify and clarify its existing mediation regulations. The Board also establishes a new arbitration

program under which carriers and shippers may agree voluntarily in advance to arbitrate certain types of disputes that come before the Board, and clarifies and simplifies its existing arbitration rules.

DATES: These rules are effective on June 12, 2013.

ADDRESSES: Information or questions regarding these final rules should reference Docket No. EP 699 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT:

Amy C. Ziehm at 202-245-0391.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, wherever possible.¹ To that end, the Board has existing rules that encourage parties to agree voluntarily to mediate or arbitrate certain matters subject to its jurisdiction. The Board’s mediation rules are set forth at 49 CFR 1109.1, 1109.3, 1109.4, 1111.2, 1111.9, and 1111.10. Its arbitration rules are set forth at 49 CFR 1108, 1109.1, 1109.2, 1109.3, and 1115.8. In a decision served on August 20, 2010,² and published in the **Federal Register** on August 24, 2010,³ we sought input on how to increase the use of mediation and arbitration to resolve matters before the Board.⁴ The

¹ Mediation is a process in which parties attempt to negotiate an agreement that resolves some or all of the issues in dispute, with the assistance of a trained, neutral, third-party mediator. Arbitration, by comparison, is an informal evidentiary process conducted by a trained, neutral, third-party arbitrator with expertise in the subject matter of the dispute. By agreeing to participate in arbitration, the parties agree to be bound (with limited appeal rights) by the arbitral decision.

² *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Aug. 20, 2010).

³ *Assessment of Mediation and Arbitration Procedures*, 75 FR 52054.

⁴ *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Dec. 3, 2010). The Board served a subsequent notice in this matter on December 3, 2010, to clarify that any comments filed by the Railroad-Shipper Transportation Advisory Council (RSTAC) would be accorded the same weight as other comments in developing any new rules. RSTAC is an advisory board established by Federal law to advise the U.S. Congress, the U.S. Department of Transportation, and the Board on issues related to rail transportation policy, with particular attention to issues of importance to small shippers and small railroads. By statute, RSTAC members are appointed by the Board’s chairman. Representatives of large and small rail customers, Class I railroads, and small railroads sit on RSTAC.

Board received comments from 12 parties.⁵

On March 28, 2012, the Board issued a Notice of Proposed Rulemaking (NPRM) incorporating the previous comments and concerns of the parties. The Board proposed regulations that would allow the Board to order parties to participate in mediation in certain types of cases and would modify and clarify its existing mediation rules. The Board also proposed an arbitration program under which carriers and shippers would agree voluntarily to arbitrate certain types of disputes, and proposed modifications to clarify and simplify its existing rules governing arbitration in other disputes.⁶

The Board sought comments on the proposed regulations by May 17, 2012,⁷ and replies by June 18, 2012.⁸ On August 2, 2012, the Board held a public hearing to further explore the NPRM and the comments of the parties. At the public hearing, the Board heard testimony from the NGFA, NITL, WCTL, AAR, NS, UP, UTU-NY, The Tom O’Connor Group (Tom O’Connor), and the Alliance for Rail Competition (ARC).⁹

As explained in the NPRM, the Board’s arbitration processes have remained largely unused since they were instituted.¹⁰ The changes to the

The Board’s members and the U.S. Secretary of Transportation are *ex officio*, nonvoting RSTAC members. (49 U.S.C. 726.)

⁵ The Board received comments from the U.S. Department of Agriculture (USDA), the Association of American Railroads (AAR), Consumers United for Rail Equity (CURE), the National Grain and Feed Association (NGFA), the National Oilseed Processors Association (NOPA), RSTAC, Transportation Arbitration and Mediation, P.L.L.C. (TAM), the Western Coal Traffic League (WCTL), Dave Gambrel, and Gordon P. MacDougall for the United Transportation Union—New York State Legislative Board (UTU-NY). The American Paper & Forest Association (APFA) and The National Industrial Transportation League (NITL) filed joint comments.

⁶ *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Mar. 28, 2012).

⁷ The Board received comments from BNSF Railway Company (BNSF), Norfolk Southern Railway Company (NS), Union Pacific Railroad Company (UP), AAR, WCTL, Montana Grain Growers Association (MGGA), NGFA, NITL, National Railroad Passenger Corporation (AMTRAK), USDA, and UTU-NY.

⁸ The Board received replies from AAR, UP, WCTL, NITL, and UTU-NY.

⁹ Terry Whiteside appeared on behalf of the following parties: ARC, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producer Board, and Washington Grain Commission.

¹⁰ The Board first adopted arbitration rules in *Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board*, EP 560 (STB served Sept. 2, 1997).