

authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 13, 2016.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2016-14523 Filed 6-20-16; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 46 CFR Part 28

[Docket No. USCG-2003-16158]

RIN 1625-AA77

#### Commercial Fishing Industry Vessels

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard announces the withdrawal of this regulatory project, which involved possible amendments to Coast Guard regulations affecting uninspected United States commercial fishing, fish processing, and fish tender vessels. The possible amendments involved vessel stability and watertight integrity, risk awareness and minimization, personnel instruction and drill requirements, safety and survival equipment, and compliance documentation. Withdrawal of this regulatory project will allow the Coast Guard to focus on a new rulemaking project implementing 2010 and 2012 legislation that affects the commercial fishing industry.

**DATES:** The advance notice of proposed rulemaking on Commercial Fishing Industry Vessels, published on March 31, 2008, at 73 FR 16815, is withdrawn as of June 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Mr. Jack Kemerer, Chief, Fishing Vessel Safety Division (CG-CVC-3), Office of Vessel Activities (CG-CVC); telephone 202-372-1249, email [Jack.A.Kemerer@uscg.mil](mailto:Jack.A.Kemerer@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

This is one of two Coast Guard publications that appear in today's **Federal Register** and that address uninspected commercial fishing industry vessels (CFVs).

- This document, announcing the withdrawal of an older rulemaking project that we began prior to 2010.
- A notice of proposed rulemaking (NPRM) for a newer rulemaking project, implementing the 2010 and 2012 statutory mandates.

We opened this older project in 2002. Its purpose was to improve safety in the commercial fishing industry, which remains one of the most hazardous occupations in the United States. As we discussed in our March 31, 2008, advance notice of proposed rulemaking (ANPRM; 73 FR 16815),<sup>1</sup> although existing Coast Guard regulations had resulted in improved safety on CFVs, the improvements in safety had leveled off and we concluded that additional regulatory action was needed to achieve further fatality and vessel loss reductions. We further concluded that safety could be improved significantly through new regulations for vessel stability and watertight integrity, risk awareness and minimization, personnel instruction and drill requirements, safety and survival equipment, and compliance documentation.

Public comments on our withdrawal of the older project are welcome, but should be submitted to the docket for the newer project. In particular, we encourage comments on whether any of the regulatory ideas discussed in our March 31, 2008 ANPRM (73 FR 16815) should be the subject of future Coast Guard regulatory action. Please see Part I of the new NPRM's preamble for information on how to submit comments, and see Part VI of that preamble for a discussion of the comments we received on the ANPRM.

Legislation enacted in 2010 and 2012 has provided the Coast Guard with additional regulatory authority over CFVs. The new legislation appears in Title VI of the Coast Guard Authorization Act of 2010, Public Law 111-281, 124 Stat. 2959 and in sections 303 and 305 of the Coast Guard and Maritime Transportation Act of 2012, Public Law 112-213, 126 Stat. 1563-1534. The new legislation significantly changes the Coast Guard's regulatory authority over CFVs and mandates some

<sup>1</sup> The ANPRM public comment period originally closed on July 29, 2008, but was reopened until December 15, 2008 (see notice, 73 FR 46912, Aug. 12, 2008). Two public meetings were held in Seattle, WA, Nov. 21 and 22, 2008.

safety provisions that were proposed in this older project. For example, the new legislation—

- Mandates new equipment requirements for many vessels, or extends existing requirements to wider vessel populations;
- Extends Coast Guard authority over Aleutian Trade fish tenders and CFVs that operate more than 3 nautical miles offshore or that carry more than 16 individuals onboard—the vessels regulated under 46 CFR part 28, subpart C;
- Requires the Coast Guard to conduct periodic mandatory dockside examinations of vessels regulated under subpart C;
- Requires new-built, smaller CFVs regulated under subpart C to meet recreational vessel safety standards;
- Requires CFVs regulated under subpart C to document maintenance, instruction, and drills;
- Requires new-built, larger, CFVs to meet loadline and vessel classification requirements, and phases in alternate safety compliance requirements for older, larger CFVs; and
- Expands the Coast Guard's authority to terminate a vessel's operation under unsafe conditions.

These requirements are discussed at greater length in the newer project's NPRM. We have decided to focus our regulatory attention on the effective implementation of the 2010 and 2012 legislation, and we therefore withdraw this older project. This notice is issued under the authority of 5 U.S.C. 552.

Dated: June 10, 2016.

**Paul F. Zukunft,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 2016-14400 Filed 6-20-16; 8:45 am]

**BILLING CODE 9110-04-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket Nos. 10-90, 14-58, 14-259; FCC 16-64]

#### Connect America Fund, ETC Annual Reports and Certification, Rural Broadband Experiments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on several specific procedures that will apply in the Phase II auction. Pursuant to the Commission's existing rules for

competitive bidding for universal service support, “[d]etailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding. With this Further Notice, the Commission begins the process of seeking comment. The Commission seeks comment on three discrete sets of issues relating to the process for determining winning bidders: How to apply weights to the different levels of performance adopted in the Order above; measures to achieve the public interest objective of ensuring appropriate support for all of the states; and measures to achieve the public interest objective of expanding broadband on Tribal lands.

**DATES:** Comments are due on or before July 21, 2016 and reply comments are due on or before August 5, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 10–90, WC Docket No. 14–58 and WC Docket No. 14–259, by any of the following methods:

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

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

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

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 10–90, 14–58 and 14–259; FCC 16–64, adopted on May 25, 2016 and released on May 26, 2016. 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 St. SW., Washington, DC 20554 or at the following Internet address: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_](http://transition.fcc.gov/Daily_Releases/Daily_)

*Business/2016/db0526/FCC-16-64A1.pdf*. The Report and Order that was adopted concurrently with the FNPRM is published elsewhere in this issue of the **Federal Register**.

## I. Introduction

1. Over the last several years, the Commission has engaged in a modernization of its universal service regime to support networks capable of providing voice and broadband, including developing a new forward-looking cost model to calculate the cost of providing service in rural and high-cost areas. In 2015, 10 price cap carriers accepted an offer of Phase II support calculated by a cost model in exchange for a state-level commitment to deploy and maintain voice and broadband service in the high-cost areas in their respective states.

2. In the Further Notice, the Commission begins the process of seeking comment on several specific procedures that will apply in the Phase II auction, including how to apply weights to the different levels of performance adopted in the concurrently adopted Order, measures to achieve the public interest objective of ensuring appropriate support for all of the states, and measures to achieve the public interest objective of expanding broadband on Tribal lands. The forthcoming *Auction Comment PN* will seek comment on other auction procedures that must be resolved in order to conduct the auction, such as the number of rounds during which bids may be submitted, package bidding, and what information will be disclosed to participants during the bidding process.

## II. Further Notice of Proposed Rulemaking

3. Pursuant to the Commission’s existing rules for competitive bidding for universal service support, “[d]etailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding.” With this Further Notice, the Commission begins the process of seeking comment on several specific procedures that will apply in the Phase II auction. The Commission seeks comment on three discrete sets of issues relating to the process for determining winning bidders: (1) How to apply weights to the different levels of performance adopted in the concurrently adopted Order; (2) measures to achieve the public interest objective of ensuring appropriate support for all of the states; and (3) measures to achieve the public interest objective of expanding broadband on Tribal lands. The forthcoming *Auction*

*Comment PN* will seek comment on other auction procedures that must be resolved in order to conduct the auction, such as the number of rounds during which bids may be submitted, package bidding, and what information will be disclosed to participants during the bidding process. The Commission also seeks comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.

### A. Comparing Bids of Differing Performance Levels

4. In the concurrently adopted Order, the Commission adopts four technology-neutral performance tiers with varying speed and usage allowances, and for each tier permit bidders to designate either low or high latency. The Commission also concludes that all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that commit to meet other performance standards. To implement this framework, the Commission has decided to use weights to take into account the differing attributes of different types of service performance.

5. In light of the decisions reached in the concurrently adopted Order, the Commission now seeks to further develop the record on how bids should be weighted in order to achieve its overarching goal of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of finite universal service funds. The Commission recognizes that setting appropriate weights is of crucial importance to achieving this goal as well as having a successful Phase II auction. Thus, the Commission seeks comment on weights today in order to expedite its ability to adopt auction procedures regarding the comparison of bids.

6. In the concurrently adopted Order, the Commission concludes that it sees the value to consumers in rural markets of having access to service during the 10-year term of support that exceeds its baseline requirements. The Commission wants to ensure that rural America is not left behind, and the consumers in those areas benefit from innovation and advances in technology. All things considered, the Commission values higher speeds over lower speeds, higher usage allowances over lower usage allowances, and lower latency over higher latency. The Commission also sees the benefits to achieving its other

universal service objectives if a Phase II service provider will be able to provide broadband adequate to meet the needs of the entire community, including schools, libraries and rural health care providers.

7. The concurrently adopted Order concludes that the Commission will use the Connect America Cost Model (CAM) to establish reserve prices, and that bids will be scored relative to the reserve price for the areas subject to the bid, with lower bids selected first, taking into account the weights on which the Commission is seeking comment. Specifically, the Commission will divide the annual amount of support per location requested per bid by the model-based support amount per location to determine an initial cost-effectiveness score for a particular bid, *i.e.*, a numeral that represents the relationship of the bid to the reserve price set for the geographic area that is subject to the bid.

8. The Commission proposes procedures to assign a weight to each service tier as well as the high and low latency designations that would alter the initial cost-effectiveness score of each bid. As described below, the Commission proposes to adopt procedures for weights that would take into account the relative benefits to consumers of the various service tiers. The Commission seeks comment on these proposals and any other alternatives. Are there other ways to compare bids, given the Commission's stated goals for this auction?

9. The Commission thus proposes to establish weights for specific types of bids that represent the relative benefits of service that provides higher speeds, higher usage allowances, and/or lower latency over service that meets lower requirements for participation in the Phase II auction. Under such a scheme, a bid closer to the reserve price but for higher performance levels could be selected based on its "weighted score"—its score that will be compared to other bids once weights are applied to its "cost-effective score"—even if another bidder seeks less actual support to provide the minimum level of service.

10. The Commission seeks comment on what specific value of weights should be applied to each of the four tiers of service. The Commission seeks comment on whether weights should be set relative to the baseline service tier, or relative to the minimum requirements for this auction. The Commission also seeks comment on what specific value of weights should be applied to low and high latency designations for each of the four tiers. In

particular, how should those tier weights be adjusted in light of low and high latency designations? Should a weight for latency be applied in the same fashion across all of the speed/usage tiers? Ultimately, the Commission seeks to establish weights that provide rural consumers with the highest quality service while making efficient use of universal service funds. In designing weights to achieve this goal, the Commission does not predetermine which bidder will win if competing head to head with another bidder for a given area. The Commission instead intends to provide a means for numerically comparing the bids received based on the value to rural consumers of having access to different service levels using the finite budget of this auction.

11. The Commission seeks comment on whether, and, if so, how, the Commission should consider subscribership data for broadband services of varying performance levels and expected costs per subscribed location in establishing weights for the Phase II auction. For example, the Commission seeks comment on potentially using the Commission's Form 477 data to inform its decision regarding weights in the Phase II auction. Should national market share data, based on the Commission's Form 477 data, inform the Commission's setting of weights?

12. The Commission recognizes, however, that these national market shares are a function of both availability and consumer preferences for certain services, and that more recent data may show different trends. For that reason, national shares would not necessarily reflect subscribership of these services where they are actually the only broadband choice deployed. Of course, the eligible areas in the Phase II auction are, by definition, those areas lacking 10 Mbps/1 Mbps service. The Commission seeks comment on whether, and, if so, how, to account for both variation in deployment across geographic areas and consumer tastes in setting procedures for weights used to compare bids. For example, could analysis be performed using FCC Form 477 subscription and deployment data or other data sources to predict the expected subscribership rate for a particular performance level offering of speed, usage, and latency in a given geographic area if that were the only offering available to every household? How could such analysis inform the weights adopted for the Phase II auction? The Commission is also guided by the statutory goal of ensuring consumers in rural and high-cost areas have access to services "that

are reasonably comparable to those services provided in urban areas." How should this objective inform the Commission's weights? Could the Commission analyze its Form 477 data on broadband deployment and subscription in urban areas in setting weights for different performance tiers? Are there other objective metrics or data sources the Commission can rely on to inform the specific numerical weights it will apply to bids?

13. A number of parties have submitted various proposals for how to weigh bids with differing performance obligations. For example, WISPA proposed that "[b]idders would begin the auction process with 100 points" and "could gain additional points, or bidding credits" by exceeding baseline performance criteria. Hughes suggested specific weights for different services levels, with no weight applied to a 10/1 speed tier, and higher weights for faster speeds and usage that exceeded baseline requirements. It proposed a 25 percent weight for low-latency offerings. The Utilities Technology Council and National Rural Electric Cooperative Association proposed weights that would translate into a weight of 50 for the gigabit service tier, a weight of 35 for the above-baseline service tier, no weight for the baseline service tier, and a negative 25 weight for the minimum service tier, as well as a negative 25 weight for high-latency offerings. The Commission seeks comment on these proposals in light of the specific performance obligation tiers and latency framework the Commission adopts in the concurrently adopted Order and its decision to use weights to adjust the cost-effectiveness score of individual bids. The Commission also seeks comment on any alternative weighting proposals.

14. The Commission does not intend to adopt auction procedures that would apply an additional weight to the bid depending on the percentage of available funds bid in a census block, as suggested by one commenter. The Commission already has decided that bids will be compared in the first instance based on the ratio of the bid amount divided by the reserve price. The weighting system that the Commission seeks comment on today would effectively adjust that bid price for purposes of comparison.

#### *B. Access to Appropriate Phase II Levels for All States*

15. In this Further Notice, the Commission next seeks comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states. In the

concurrently adopted Order, the Commission recognizes the concerns raised by those states where significant amounts of Phase II funding were declined (declined states). Specifically, the Commission recognizes that it is making available \$2.15 billion in support in the Phase II auction, of which approximately \$1.05 billion was originally offered to particular states as part of the Phase II state-wide election process. And the Commission recognizes that where incumbent carriers declined the offer of support does not diminish its universal service obligation to connect consumers in areas that would have been reached had the offer been accepted and to provide sufficient universal service funds to do so. The Commission seeks to design a Phase II auction that achieves an efficient and equitable distribution across the states for Phase II Connect America funding, recognizing the relative characteristics of individual states. The Commission seeks comment generally on how to address these concerns in line with its universal service objectives. The Commission seeks comment on the ideas set forth below and also invite commenters to identify any additional or alternative measures it could take to address these concerns.

16. To begin with, the Commission recognizes and applauds state initiatives to advance broadband deployment and access to unserved and underserved consumers. The Commission seeks further comment on how best to coordinate with such initiatives to achieve its universal service goals.

17. With respect to equitable distribution among states, the Commission first seeks comment on establishing weights that would provide a preference to such declined states or other auction design procedures for the comparison of bids to ensure equitable funding to such states. The Commission also seeks comment on adopting weights to provide a preference for those states that have made a meaningful commitment to advance broadband, such as the state initiatives mentioned above. If the Commission were to adopt such weights for either purpose, at what value should such weights be set? Are there other auction procedures that could be used that would be simple to administer and help achieve the Commission's objectives?

18. Second, the Commission seeks comment on creating a 'backstop' of funds that could be used, if necessary, to ensure an equitable distribution of funding to declined states. For example, the Commission could conduct the Phase II auction initially with \$1.75

billion of the total \$2.15 billion Phase II budget. If a state falls short of winning aggregate bids that total to a set percentage of the amount previously declined in the state by the incumbent price cap carrier, the remaining \$400 million could be allocated to the remaining next-in-line bidders in just those states, on a lowest bid score basis. If the Commission were to adopt such an approach, what percentage of the declined amount should be used as the trigger amount? Should the Commission adopt an 80 percent trigger? Or a higher or lower trigger? Alternatively, should next-in-line bidders in those specific states be selected on a lowest cost basis?

19. Third, the Commission seeks comment on viewing the problem of ensuring adequate service to all rural Americans holistically, so any state allocated less funding in the Phase II auction will almost certainly need more support from the Remote Areas Fund. The Commission could, for example, reserve funding in the Remote Areas Fund in direct proportion to any shortfall between the funding declined in the statewide election process and the amount allocated in the Phase II auction. A holistic approach may balance the concerns for efficiency in the Phase II auction with the Commission's concern for ensuring that every state's rural residents are given the opportunity to access broadband at reasonably comparable speeds to urban areas. If the Commission adopted this approach, should it guarantee all the funding declined for a state is allocated there between the Phase II auction and the Remote Areas Fund, or only some proportion? If the latter, how should the Commission choose that amount?

20. Fourth, the Commission seeks comment on setting a ceiling for the aggregate total of winning bids in any given state to prevent a substantial redistribution of Phase II funds among states. For example, the Commission could adopt auction procedures that would help ensure that winning bids in a given state do not exceed more than 125 percent of the amount declined by the incumbent price cap carriers in that state. If the Commission were to adopt such a ceiling, what would be the right level for such a ceiling?

21. Finally, the Commission seeks comment on adopting alternative auction procedures designed to help ensure that declined states receive all or substantially all of the funds declined by the incumbent carrier. Such procedures would help ensure that, following the Phase II auction, declined states would be in the same or substantially the same position they would have been in had the incumbent

carrier accepted support. For example, the Commission could establish procedures to prioritize selection of bids for declined states until a specified floor is met, assuming sufficient bidding in the declined state. If the Commission were to adopt such a floor, should the floor be set at 100 percent of the declined amount? Or should it be set at 95 or 90 percent or some other percentage of declined support?

22. The Commission seeks comment on advantages and disadvantages of each of these alternatives as well as any other alternatives commenters suggest. Commenters should explain how each of the approaches they advocate would affect the efficiency of the Phase II auction. Which mechanism or combination of mechanisms might best advance the Commission's objective of ensuring that all states have access to appropriate levels of Phase II funding overall? In considering mechanisms to ensure appropriate support to all of the states, should the Commission focus on the amount of funding that was declined by the incumbent carriers, the number of locations that would have been served had the incumbent carrier accepted the Phase II offer of support, or the overall amount of Phase II support provided to the state?

#### *C. Access to Service on Tribal Lands*

23. The Commission also seeks to further develop the record on how to advance its policy objective of extending broadband to unserved Tribal lands through the Phase II auction. The Commission recognizes the historic challenges of serving Tribal lands and the low level of broadband service deployment on Tribal lands. Here, the Commission seeks comment on several possible auction procedures that could advance its goal of expanding access to broadband on Tribal lands.

24. In prior universal service competitive bidding processes, the Commission adopted a Tribal bidding credit. In Mobility Fund Phase I and Tribal Mobility Fund Phase I, Tribal bidders could apply a 25 percent credit to bids. In the rural broadband experiments, bids proposing to serve only Tribal lands could apply a 25 percent credit.

25. The Commission seeks comment on adopting such a Tribal-specific weight in the Phase II auction and how such a weight should be designed to further its objective of advancing broadband deployment on Tribal lands. Should the Commission adopt a weight that would lower the effective score of Tribal entities that bid (thereby making their bids more like to succeed)? Or should the Commission adopt a weight

that would apply to any bid seeking to serve Tribal lands? If a bid is seeking to serve a combination of Tribal lands and non-Tribal lands, should the Commission apply a Tribal weight? If so, how would that weight be applied across the bid so as not to benefit bids that seek to serve only a *de minimis* number of Tribal locations? To the extent that a weight is applied to a bid that contains both Tribal and non-Tribal census blocks, should the weight be apportioned by number of locations in the relevant areas or by the geography (square miles) of the relevant areas? Is there some other procedure for Tribal weights that would be simple to administer?

26. One goal of a Tribal-specific weight could be to make it more likely a bidder proposing to serve Tribal lands would be selected by lowering its bid score. Another goal could be to make it more likely that the Commission has bidders willing to bid on Tribal lands. A score-lowering weight alone may not achieve the goal of incentivizing providers to bid on Tribal lands. As the Commission has noted in the 2011 *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011, greater financial support may be necessary in order to ensure the availability of broadband on Tribal lands. The Commission therefore also seeks comment on any alternative auction procedures that could be adopted to further its goals of advancing deployment on Tribal lands.

#### *D. Limited Adjustments to Interim Deployment Milestones*

27. Finally, as noted in the concurrently adopted Order, the interim deployment milestones adopted above may not be appropriate for non-terrestrial providers or other providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations. Here, the Commission seeks comment on how to address this issue. Some parties have made proposals in the record to address this issue. For instance, a satellite provider may already have launched the satellite on which it will rely to provide the broadband service and need only to deploy customer premises equipment. In that circumstance, the interim deployment milestones would provide more time than needed to begin offering service to consumers. The Commission seeks comment on the proposal in the record and any alternative ways to address the issue. How should interim deployment milestones be modified, if at all, for providers that have already deployed significant amounts of infrastructure necessary to meet the service commitments? What specific

milestones should the Commission adopt in the alternative so as to be able to monitor compliance with deployment obligations? As the Commission evaluates such alternatives, it remains mindful of its goals of promoting universal service efficiently while maintaining the financial integrity of the fund.

### **III. Procedural Matters**

#### *A. Paperwork Reduction Act Analysis*

28. The FNPRM contains proposed new information collection requirements. The Commission as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### *B. Initial Regulatory Flexibility Analysis*

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

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

30. In the concurrently adopted Order, the Commission adopts public interest obligations for recipients of support awarded through the Phase II competitive bidding process that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what

their performance standards will be before bids are made. In particular, the Commission establishes four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency. The concurrently adopted Order provides general guidance on auction design, with certain details to be determined by the Commission at a future date in the *Auction Procedures Public Notice*, after further opportunity for comment.

31. Separately, with the Further Notice, the Commission begins the process of seeking comment on several specific procedures that will apply to the Phase II auction. The Commission seeks comment on three discrete sets of issues relating to the process for determining winning bidders: (1) How to apply weights to the different levels of performance adopted in the concurrently adopted Order; (2) measures to achieve the public interest objective of ensuring appropriate support for all of the states; and (3) measures to achieve the public interest objective of expanding broadband on Tribal lands. The Commission also seeks comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.

#### a. Comparing Bids of Differing Performance Levels

32. In the concurrently adopted Order, the Commission adopts four technology-neutral performance tiers with varying speed and usage allowances, and for each tier permit bidders to designate either low or high latency. The Commission also concludes that all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. To implement this framework, the Commission has decided to use weights to take into account the differing attributes of different types of service performance.

33. The Further Notice seeks comment on how bids should be weighted in order to achieve its overarching goal of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of limited universal service funds. The Commission

recognizes that setting appropriate weights is of crucial importance to achieving this goal and implementing a successful Phase II auction. Thus, the Commission seeks comment on weights in the Further Notice in order to expedite its ability to adopt auction procedures regarding the comparison of bids. A number of parties have submitted various proposals for how to weigh bids with differing performance obligations. In the Further Notice, the Commission seeks comment on these proposals and how it should consider them in light of the performance obligation tiers and latency framework it adopts in the concurrently adopted Order. The Commission also seeks comment on any alternative weighting proposals.

34. The Further Notice proposes to adopt procedures that would assign a weight to each service tier as well as the high and low latency designations that would alter the initial cost-effectiveness score of each bid. The Further Notice proposes to adopt procedures for weights that would take into account the relative benefits to consumers of higher speeds, higher usage allowances, and lower latency. The Commission seeks comment on these proposals and any other alternatives. The Further Notice also seeks comment on what specific value of weights should be applied to each tier of service, and whether any of the different service tiers should be valued equivalently. The Commission also seeks comment on whether weights should be set relative to the baseline service tier, relative to the minimum requirements for this auction, or other approaches. The Commission also seeks comment on potentially using the Commission's Form 477 data or other subscribership data including costs per subscriber location in setting weights.

#### b. Access to Appropriate Phase II Levels for All States

35. The Further Notice also seeks comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states. In the concurrently adopted Order, the Commission recognizes the concerns raised by those states where significant amounts of Phase II funding were declined (declined states). The Commission seeks comment in the Further Notice generally on how to address these concerns in line with its universal service objectives.

36. The Commission first seeks comment in the Further Notice on establishing weights that would provide a preference to declined states or other auction design procedures for the

comparison of bids to ensure equitable funding to such states. The Commission also seeks comment on adopting weights to provide a preference for those states that have made a meaningful commitment to advance broadband. The Commission seeks comment on creating a funding 'backstop' that could be used, if necessary, to ensure an equitable distribution of funding to declined states. The Commission also seeks comment on putting in place additional or subsequent measures to make up any shortfall from the declined amounts that remain following the Phase II auction. The Commission seeks comment on adopting an auction procedure that sets a ceiling for the aggregate total of winning bids in any given state to prevent a substantial redistribution of Phase II funds among states. If the Commission were to adopt such a ceiling, what would be the appropriate level? Finally, the Commission seeks comment on adopting auction procedures intended to ensure that declined states receive all or substantially all of the funds declined by the incumbent carrier.

#### c. Access to Service on Tribal Lands

37. In the Further Notice, the Commission acts to further develop the record on how to advance its policy objective of extending broadband to unserved Tribal lands. The Commission recognizes the historic challenges of serving Tribal lands and the low deployment of broadband service on Tribal lands. The Commission seeks comment on several auction procedures that could advance its goal of expanding access to broadband on Tribal lands.

38. The Commission seeks comment on adopting a Tribal-specific weight in the Phase II auction and how such a weighting should be designed to further its objective of advancing broadband deployment on Tribal lands. The Commission seeks comment on whether to provide a weight to the bids of all or a subset of entities bidding on Tribal lands and it seeks comment whether all or part of the area bid on must be Tribal lands for the bidder to receive a Tribal-specific weight. The Commission also seeks comment in the Further Notice on any alternative auction procedures that could be adopted to further its goals of advancing broadband deployment on Tribal lands.

#### d. Limited Adjustments to Interim Deployment Milestones

39. In the Further Notice, the Commission seeks comment on how to address interim deployment milestones for non-terrestrial providers or other

providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations. The Commission seeks comment on how interim deployment milestones should be modified, if at all, for providers that have already deployed significant amounts of infrastructure necessary to meet the service commitments and on what specific milestones should the Commission adopt in the alternative so as to be able to monitor compliance with deployment obligations.

#### 2. Legal Basis

40. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 5, 10, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.3, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.3, 1.421, 1.427, and 1.429.

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

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

##### a. Total Small Entities

42. The Commission's proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States. In addition, 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 2007, there were approximately 1,621,215 small organizations. Finally, 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 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

#### b. Broadband Internet Access Service Providers

43. Any rules adopted pursuant to the Further Notice will apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled “broadband.” The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of \$32.5 million or less. These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first 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 1,000 employees or more. For the second category, the data show that 2,383 firms operated for the entire year. Of those, 2,346 had annual receipts below \$32.5 million per year. Consequently, the Commission estimates that the majority of broadband Internet access service provider firms are small entities.

44. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that the Commission’s action might affect, the Commission discusses in turn several different types

of entities that might be providing broadband Internet access service. The Commission notes that, although it has no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, it includes these entities in its Initial Regulatory Flexibility Analysis.

#### c. Wireline Providers

45. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable 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, 1,307 carriers reported that they were incumbent LEC 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 LEC service are small businesses that may be affected by rules adopted pursuant to the Further Notice.

46. *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 Further Notice.

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

48. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by rules adopted pursuant to the Further Notice.

49. *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, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Further Notice.

50. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a



business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Further Notice.

51. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Further Notice.

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

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

the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Further Notice.

54. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

#### d. Wireless Providers—Fixed and Mobile

55. The broadband Internet access service provider category covered by this Further Notice may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that claim to 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 and transfers or reportable eligibility

events, unjust enrichment issues are implicated.

56. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 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 1,000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, the Commission estimates that the vast majority of wireless firms are small.

57. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.

58. *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*, 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These size standards will be used in



future auctions of 218–219 MHz spectrum.

59. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

60. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

61. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

62. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of

broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

63. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

64. *Specialized Mobile Radio Licenses.* The Commission awards “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. The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses

under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

65. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

66. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. 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. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. The Commission assumes, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

67. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A “very small business” is

defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—"entrepreneur"—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

68. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*, 72 FR 48814, August 24, 2007. An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) won 325 licenses.

69. *Upper 700 MHz Band Licenses*. In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission

commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

70. *700 MHz Guard Band Licensees*. In 2000, in the *700 MHz Guard Band Order*, 65 FR 17594, April 4, 2000, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

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

72. *Private Land Mobile Radio ("PLMR")*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's

primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

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

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

75. *Air-Ground Radiotelephone Service*. The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service

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

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

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

77. *Advanced Wireless Services (AWS) (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)).* For the AWS-1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS-2 and AWS-3, although the Commission does not know for certain which entities are likely to apply for these frequencies, it notes that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

78. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

79. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital

Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA’s definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 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 36,708 common carrier fixed licensees and up to 59,291 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. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

80. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard,

the majority of firms can be considered small.

81. *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 licenses are small entities that may be affected by rules adopted pursuant to the Further Notice.

82. *Broadband Radio Service and Educational Broadband Service*. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

83. In 2009, the Commission conducted Auction 86, the sale of 78

licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

84. In addition, the SBA’s Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this

total, 948 firms had annual receipts of under \$10 million, and 48 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

85. *Narrowband Personal Communications Services*. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*, 65 FR 35843, June 6, 2000. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

86. *Paging (Private and Common Carrier)*. In the *Paging Third Report and Order*, 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the

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

87. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the Further Notice.

88. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for

the preceding three years. A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

#### e. Satellite Service Providers

89. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$30 million or less in average annual receipts, under SBA rules. The second has a size standard of \$30 million or less in annual receipts.

90. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” For this category, Census Bureau data for 2007 show that there were a total of 570 firms that operated for the entire year. Of this total, 530 firms had annual receipts of under \$30 million, and 40 firms had receipts of over \$30 million. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

91. The second category of Other Telecommunications comprises, *inter alia*, “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.” For this category, Census Bureau data for 2007 show that

there were a total of 1,274 firms that operated for the entire year. Of this total, 1,252 had annual receipts below \$25 million per year. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by its action.

#### f. Cable Service Providers

92. Because section 706 requires the Commission to monitor the deployment of broadband using any technology, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

93. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 2,048 firms in this category that operated for the entire year. Of this total, 1,393 firms had annual receipts of under \$10 million, and 655 firms had receipts of \$10 million or more. Thus, the majority of these firms can be considered small.

94. *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 that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators are small under the 400,000 subscriber size standard. In addition, under the Commission’s rules, a “small

system” is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, the Commission estimates that most cable systems are small entities.

95. *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. Based on available data, the Commission finds that all but ten incumbent cable operators are small entities under this size standard. The Commission notes 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 it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

96. 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 1,000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Further Notice. In

addition, the Commission notes that it 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.

#### g. Electric Power Generators, Transmitters, and Distributors

97. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of “establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.” The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.” Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees. Based on this data, a majority of these firms can be considered small.

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

98. In the Further Notice, the Commission begins the process of seeking comment on several specific procedures that will apply in the Phase II auction. The Commission seeks comment on three discrete sets of issues relating to the process for determining winning bidders: (1) How to apply weights to the different levels of performance adopted in the concurrently adopted Order; (2) measures to achieve the public interest objective of ensuring appropriate support for all of the states; and (3) measures to achieve the public interest

objective of expanding broadband on Tribal lands. The Commission also seeks comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.

99. First, the Commission seeks comment on how to apply weights to the different levels of performance adopted in the concurrently adopted Order. As part of the weighting process, bidders should not need to provide additional information beyond their bid.

100. Second, the Commission also seeks comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states. To the extent that these procedures require bidders to identify whether they qualify, bidders will have to provide that information to the Commission.

101. Third, the Commission seeks comment on several auction procedures that could advance its goal of expanding access to broadband on Tribal lands. Similarly, to the extent that these procedures require bidders to identify whether they qualify, bidders will have to provide that information to the Commission.

102. Fourth, the Commission seeks comment on issues relating to interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations. Alternative interim milestones could require entities to report deployment information at different or accelerated intervals.

#### 5. Steps Taken To Minimize the 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 (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission expects to consider all of these factors when it has received substantive comment from the public and potentially affected entities.

104. *Comparing Bids of Different Performance Levels.* The Commission does not expect the submission of additional information from bidders in order to score weighted bids. In the Further Notice, the Commission specifically seeks comment on the weighting proposals of a number of industry groups, and it will take into account any concerns that these groups and subsequent commenters may have regarding any additional burden on carriers, particularly small entities. The Commission expects to consider whether any burden from these procedures would be outweighed by the benefit of furthering the Commission's goal to provide households in the relevant high-cost areas with access to high quality broadband services in the most efficient way possible.

105. *Access to Appropriate Phase II Levels for All States.* The Commission does not expect that any weighting factors or other processes adopted to ensure appropriate support for all states will increase the administrative burden on bidders. To the extent that these procedures require bidders to identify whether they qualify, such as whether a bidder is submitting a bid in a declined state, bidders should readily have access to the necessary information.

106. *Access to Service on Tribal Lands.* Similarly, the Commission does not expect that any weighting factors or other processes adopted to advance its goal of expanding access to broadband on Tribal lands will increase the administrative burden on bidders. To the extent that these procedures require bidders to identify whether they qualify, such as whether a bidder is submitting a bid to serve Tribal lands, bidders should readily have access to the necessary information.

107. *Limited Adjustments to Interim Deployment Milestones.* Interim deployment milestones for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations could require entities to report deployment information at different or accelerated intervals than other Phase II recipients. However, such entities could complete deployment reporting sooner than other providers. All high-cost recipients are subject to narrowly tailored reporting obligations in order to enable the Commission to determine how high-cost support is being used to improve broadband availability, service quality, and capacity.

108. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the

Further Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Further Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

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

109. None.

#### C. Ex Parte Presentations

110. *Permit-But-Disclose.* The proceeding this Second FNPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

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

113. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, [Alexander.Minard@fcc.gov](mailto:Alexander.Minard@fcc.gov), (202) 418-7400.

#### IV. Ordering Clauses

114. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that the concurrently adopted Report and Order and Further Notice of Proposed Rulemaking *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval. It is the Commission's intention in adopting these rules that if any of the rules that it retains, modifies, or adopts herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.



115. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.421, 1.427, and 1.429, *notice is hereby given* of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

116. *It is further ordered* that Part 54 of the Commission's rules, 47 CFR part 54, *is amended* as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after publication of the rules amendments in the **Federal Register**, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review *shall become effective* immediately upon announcement in the **Federal Register** of OMB approval and an effective date.

117. *It is further ordered* that the Commission SHALL SEND a copy of the concurrently adopted Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

118. *It is further ordered*, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the concurrently adopted Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

[FR Doc. 2016–14507 Filed 6–20–16; 8:45 am]

**BILLING CODE 6712–01–P**

## **SURFACE TRANSPORTATION BOARD**

### **49 CFR Chapter X**

[Docket No. EP 733]

#### **Expediting Rate Cases**

**AGENCY:** Surface Transportation Board.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Pursuant to section 11 of the Surface Transportation Board

Reauthorization Act of 2015, the Surface Transportation Board (Board or STB) is instituting a proceeding through this Advance Notice of Proposed Rulemaking (ANPR) to assess procedures that are available to parties in litigation before courts to expedite such litigation, and the potential application of any such procedures to rate cases before the Board. The Board also intends to assess additional ways to move stand-alone cost (SAC) rate cases in particular more expeditiously.

**DATES:** Comments are due by August 1, 2016. Reply comments are due by August 29, 2016.

**ADDRESSES:** Comments on this proposal may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: EP 733, 395 E Street SW., Washington, DC 20423–0001. Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site. Information or questions regarding this ANPR should reference Docket No. EP 733 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:**

Allison Davis: (202) 245–0378.

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

**SUPPLEMENTARY INFORMATION:** Section 11 of the Surface Transportation Board Reauthorization Act of 2015, Public Law 114–110, 129 Stat. 2228 (2015) (STB Reauthorization Act) directs the Board, not later than 180 days after the date of the enactment of the Act, to “initiate a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation and the potential application of any such procedures to rate cases.” 129 Stat. 2228. In addition, section 11 requires the Board to comply with a new timeline in SAC cases.<sup>1</sup>

<sup>1</sup> The statute previously required the Board to issue a decision no later than 270 days after the close of the record, which the Board measured from the filing of closing briefs. Under the STB Reauthorization Act, the Board is now required to issue a decision no later than 180 days after the close of the record, which by statute is now defined

In advance of initiating this proceeding, Board staff held informal meetings with stakeholders<sup>2</sup> to explore and discuss ideas on: (1) How procedures to expedite court litigation could be applied to rate cases, and (2) additional ways to move SAC cases forward more expeditiously.

Based on the Board's experience in processing rate cases, as well as the feedback received during the informal meetings, the Board has generated a number of ideas to expedite rate cases. We now seek formal comment on procedures used to expedite court litigation that could be applied to rate cases and the ideas listed below to expedite SAC through this ANPR.<sup>3</sup> In their comments, parties may address any relevant matters, but we specifically seek comment on the following potential changes to SAC rate cases.

#### **Pre-Filing Requirement**

In order to expedite SAC cases, several stakeholders suggested that the Board could require a complainant to file a notice before filing its complaint.<sup>4</sup> This would create a “pre-complaint” period, during which the railroad would have time to start preparing for litigation, including gathering documents and data necessary for the discovery stage, which in turn could

to exclude closing briefs. *See* 49 U.S.C. 10704(d)(2). Thus, pursuant to the STB Reauthorization Act, the time available to the Board to issue a decision after closing briefs has been reduced from 270 days to 150 days. The Board has adopted a new timeline to comply with this provision. *Revised Procedural Schedule in Stand-Alone Cost Cases*, EP 732, slip op. at 2–5 & n.3 (STB served Mar. 9, 2016).

<sup>2</sup> Board staff met with individuals either associated with and/or speaking on behalf of the following organizations: American Chemistry Council; Archer Daniels Midland Company; CSX Transportation, Inc.; Economists Incorporated; Dr. Gerald Faulhaber; FTI Consulting, Inc.; GKG Law, P.C.; Growth Energy; Highroad Consulting; L.E. Peabody; LaRoe, Winn, Moerman & Donovan; consultant Michael A. Nelson; Norfolk Southern Railway Company; Olin Corporation; POET Ethanol Products; Sidley Austin LLP; Slover & Loftus LLP; Steptoe & Johnson LLP; The Chlorine Institute; The Fertilizer Institute; The National Industrial Transportation League; and Thompson Hine LLP. We note that some participants expressed individual views, not on behalf of the organization(s) with which they are associated.

<sup>3</sup> Since 2014, the Board has also undertaken a number of internal changes to process SAC cases more efficiently. Although these changes will not require any stakeholder action, the Board expects that they will lead to improvements in the way the Board manages case workflow. These changes include greater use of technical conferences with parties early in proceedings, issuance of evidentiary instructions following the technical conferences, internal management structure changes for rate cases, improving communication and coordination among Board staff, and setting additional milestone markers within our internal workflow.

<sup>4</sup> In the context of major and significant mergers, the Board requires a pre-filing notification. *See* 49 CFR 1180.4(b).