No. 1283712–50–4) under 40 CFR 180.960 when used as a pesticide inert ingredient in pesticide formulations as a dispersing agent. The petitioner believes no analytical method is needed because 2–Propenoic acid, 2-methyl-, 2-ethylhexyl ester, telomere with 1-dodecanethiol, ethenylbenzene and 2-methyloxirane polymer with oxirane monoether with 1,2-propanediol mono(2-methyl-2-propenoate), hydrogen 2-sulfobutanedioate, sodium salt, 2,2′-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated is exempt from the requirement of a tolerance based upon the definition of a low-risk polymer under 40 CFR 723.250. Therefore, an analytical method to determine residues on treated crops is not relevant. Contact: Alganesh Debesai, (703) 308–8353, email address: debesai.alganesh@epa.gov.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–33440 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 14

[CG Docket No. 10–213; WT Docket No. 96–198; CG Docket No. 10–145; FCC 11–151]

Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on the implementation of certain provisions in sections 716, 717, and 718 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), the most significant piece of accessibility legislation since the passage of the Americans with Disabilities Act in 1990. Specifically, this document seeks comment on whether to adopt a permanent exemption for small entities that provide advanced communications services (ACS). The document also seeks comment on implementing section 718 of the Act which requires Internet browsers built into mobile phones to be accessible to and usable by persons who are blind or have a visual impairment, unless doing so is unachievable. This inquiry includes the recordkeeping and enforcement requirements related to section 718. People with disabilities have often faced technical challenges associated with the use of Internet browsers, video conferencing services, and the accessibility of information content. The CVAA attempts to bring existing communications laws protecting people with disabilities in line with 21st Century technologies while providing flexibility to the industry by allowing for new and innovative ways to meet the needs of people with disabilities. These actions will promote rapid deployment of and universal access to broadband services for all Americans across the country, which will in turn stimulate economic growth and provide opportunity.

DATES: Submit comments on or before February 13, 2012, and reply comments on or before March 14, 2012. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before February 28, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by FCC 11–151, or by CG Docket Nos. 10–213 and 10–145, and WT Docket No. 96–198, by any of the following methods:

- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* 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* 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: Rosaline Crawford, Consumer and Governmental Affairs Bureau, at (202) 418–2075 or *rosaline.crawford@fcc.gov;* Brian Regan, Wireless Telecommunications Bureau, at (202) 418–2849 or *brian.regan@fcc.gov;* or Janet Sievert, Enforcement Bureau, at (202) 418–1362 or *janet.sievert@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), document FCC 11–151, adopted October 7, 2011, and released October 7, 2011, in CG Docket Nos. 10–213 and 10–145, and WT Docket No. 96–198. Simultaneously with the *FNPRM,* the Commission issued a *Report and Order* in CG Docket Nos. 10–213 and 10–145, and WT Docket No. 96–198 (''Accessibility Report and Order''). The full text of FCC 11–151 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. FCC 11–151 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its web site, *www.bcpiweb.com,* or by calling 1–(800) 378–3160. FCC-11-151 can also be downloaded in Word or Portable Document Format (PDF) at: *http://hraunfoss.fcc.gov/edocs_public/attachment/FCC-11-151A1doc.*

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket numbers of this proceeding, CG Docket No's. 10–213 and 10–145, and WT Docket No. 96–198.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and CG Docket No.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be

sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC-11-151A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY).

Document FCC 11–151 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via email at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov,* and to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167, or via email to *Nicholas_A._Fraser@omb.eop.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due February 28, 2012. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment FNPRM.

Form No.: N/A.

Type of Review: New collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit Institutions.

Number of Respondents and Responses: 10,642 respondents and 37,917 responses.

Estimated Time per Response: .50 to 40 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; Recordkeeping requirement; Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Act, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 272,168 hours.

Total Annual Costs: $236,814.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31 of the Commission's rules and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to subpart D of part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Note: The Commission will prepare a revision to the SORN and PIA to cover the PII collected related to this information collection, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Needs and Uses: In document FCC 11–151, the Commission released an *FNPRM* seeking comment on the implementation of sections 716, 717, and 718 of the Communications Act (Act), as amended, which were added to the Act by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (CVAA). *See* Public Law 111–260, § 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with

disabilities, unless doing so is not achievable. *See* 47 U.S.C. 617. Section 717 of the Act establishes new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. *See* 47 U.S.C. 617. Section 255 requires telecommunications and interconnected voice over Internet protocol (VoIP) services and equipment to be accessible, if readily achievable. Section 718 of the Act requires web browsers included on mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. *See* 47 U.S.C. 619.

Specifically, the Commission seeks comment on the adoption of a permanent exemption for small entities, the meaning of ''interoperable'' video conferencing services, the accessibility of information content, the adoption of performance objectives and safe harbors, and related issues. In addition, the Commission proposes rules to implement section 718 of the Act.

For purposes of the *FNPRM* information collection analysis, the Commission assumes that the *FNPRM* proceeding will result in the adoption of a permanent small entity exemption for accessibility obligations under section 716 of the Act that is identical to the temporary small entity exemption adopted in the *Accessibility Report and Order,* 47 CFR 14.4 of the Commission's rules, that will expire on October 8, 2013. The adoption of such a small entity exemption rule may impact the following possible related information collection requirements:

(a) Petitions for waivers from the accessibility obligations of section 716 of the Act and, in effect, waivers from the recordkeeping requirements and enforcement procedures of section 717 of the Act that may be filed by advanced communications service providers and equipment manufacturers. Waiver requests may be submitted for individual or class offerings of services or equipment which are designed for multiple purposes, but are designed primarily for purposes other than using advanced communications services. All such waiver petitions will be put on public notice for comments and oppositions.

(b) The requirement for service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to maintain records of the following: (1) Their efforts to consult with people with disabilities; (2) descriptions of the accessibility features of their products and services; and (3) information about the compatibility of their products with peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access.

(c) The requirement for an officer of service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to certify annually to the Commission that records are kept in accordance with the recordkeeping requirements. The certification must also identify the name and contact details of the person or persons within the company that are authorized to resolve accessibility complaints, and the agent designated for service of process. The certification must be updated when necessary to keep the contact information current.

(d) The filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. As a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

Summary

I. Introduction and Overview

1. In this *FNPRM,* we seek comment on whether to adopt a permanent exemption for small entities and, if so, whether it should be based on the temporary exemption or some other criteria. We seek comment on the impact of a permanent exemption on providers of ACS and manufacturers of ACS equipment, including the compliance costs for small entities absent a permanent exemption. We also seek comment on the impact of a permanent exemption on consumers, including on the availability of accessible ACS and ACS equipment and on the accessibility of new ACS innovations or ACS equipment innovations. We propose to continually monitor the impact of any small entity exemption, including whether it promotes innovation or whether it has unanticipated negative consequences on the accessibility of ACS.

2. We propose to clarify that Internet browsers are software generally subject to the requirements of section 716, with the exception of the discrete category of Internet browsers built into mobile phones used by individuals who are blind or have a visual impairment, which Congress singled out for particular treatment in section 718. We seek to further develop the record on the technical challenges associated with ensuring that Internet browsers built into mobile phones and those browsers incorporated into computers, laptops, tablets, and devices other than mobile phones are accessible to and usable by persons with disabilities.

3. With regard to section 718, which is not effective until 2013, we seek comment on the best way(s) to implement section 718 so as to afford affected manufacturers and service providers the opportunity to provide input at the outset, as well as to make the necessary arrangements to achieve compliance at such time as the provisions of section 718 become effective.

4. To ensure that we capture all the equipment Congress intended to fall within the scope of section 716, we seek comment on alternative proposed definitions of ''interoperable'' as used in the term ''interoperable video conferencing.'' Additionally, we ask whether we should require that video mail service be accessible to individuals with disabilities when provided along with a video conferencing service. We seek to further develop the record regarding specific activities that impair or impede the accessibility of information content. We also seek comment on whether performance objectives should include certain testable criteria. In addition, we seek comment on whether certain safe harbor technical standards will allow the various components in the ACS architecture to work together more efficiently, thereby facilitating accessibility. We also seek comment on the definition of ''electronically mediated services,'' the extent to which electronically mediated services are covered under section 716, and how they can be used to transform ACS into an accessible form.

A. Small Entity Exemption

5. As we explained in the *Accessibility Report and Order,* section 716(h)(2) of the Act authorizes the Commission to exempt small entities from the requirements of section 716, and as an effect, the concomitant obligations of section 717. The exemption relieves from section 716 small entities that may lack the legal, technical, or financial ability to incorporate accessibility features, conduct an achievability analysis, or comply with the section 717 recordkeeping and certification requirements. In the *Accessibility Report and Order,* we found the record insufficient to adopt a permanent exemption or to adopt the criteria to be used to determine which small entities to exempt. Instead, we exercised our authority to temporarily exempt all manufacturers of ACS equipment and providers of ACS that are small business

concerns under applicable SBA rules and size standards. The temporary exemption will expire on the earlier of: (1) the effective date of small entity exemption rules adopted pursuant to the *FNPRM;* or (2) October 8, 2013.

6. We first seek comment on whether to permanently exempt from the obligations of section 716, manufacturers of ACS equipment and providers of ACS that qualify as small business concerns under the SBA's rules and size standards and, if so whether to utilize the size standards for the primary industry in which they are engaged under the SBA's rules. The SBA criteria were established for the purpose of determining eligibility for SBA small business loans. Are these same criteria appropriate for the purpose of relieving covered entities from the obligations associated with achievability analyses, recordkeeping, and certifications? If these size criteria are not appropriate for a permanent exemption, what are the appropriate size criteria? Are there other criteria that should form the basis of a permanent exemption?

7. As explained in the *Accessibility Report and Order,* small business concerns under the SBA's rules must meet the SBA size standard for six-digit NAICS codes for the industry in which the concern is primarily engaged. To determine an entity's primary industry, the SBA ''considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.'' We seek comment on the applicability of this rule for the permanent small entity exemption.

8. We seek comment on the applicability of the SBA definition of ''business concern.'' Under SBA's rules, a business concern is an ''entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' We also seek comment on the applicability of other SBA rules for determining whether a business qualifies as a small business concern, including rules for determining annual receipts or employees and affiliation between businesses.

9. We also seek comment on alternative size standards that the Commission has adopted in other contexts. In establishing eligibility for spectrum bidding credits, the Commission has adopted alternative size standards for ''very small'' and ''small'' businesses. The Commission has defined ''very small'' businesses for these purposes as entities that, along with affiliates, have average gross revenues over the three preceding years of either $3 million or less, or $15 million or less, depending on the service. The Commission has defined ''small'' businesses in this context as entities that, along with affiliates, have average gross revenues over the three preceding years of either $15 million or less, or $40 million or less, depending on the service. The Commission has also adopted detailed rules for determining affiliation between an entity claiming to be a small business and other entities. Finally, in at least one instance, the Commission defined a small business in the spectrum auction context as an entity that, along with its affiliates, has $6 million or less in net worth and no more than $2 million in annual profits (after federal income tax and excluding carry over losses) each year for the previous two years. We seek comment on whether these alternatives—in whole, in part, or in combination—should form the basis for a permanent small entity exemption from the requirements of section 716.

10. The Commission has also used different size standards to define small cable companies and small cable systems, and the Act includes a definition of small cable system operators. The Commission has defined small cable companies as a cable company serving 400,000 or fewer subscribers nationwide, and small cable systems as a cable system serving 15,000 or fewer subscribers. The Act defines small cable system operators as ''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.'' We seek comment on whether these alternatives—in whole, in part, or in combination—should form the basis for a permanent small entity exemption from the requirements of section 716.

11. In addition, we seek comment on any other criteria that might form all or part of a permanent small entity exemption. For example, the SBA primarily uses two measures to determine business size—the maximum number of employees or maximum annual receipts of a business concern—but it has also applied other measures that represent the magnitude of operations of a business within an industry, including ''total assets'' held by an entity and the ''net worth'' and ''net income'' for an entity. Does an exemption based on some criterion other than employee count or revenues better meet Congressional intent? Commenters are encouraged to explain fully any alternative—including the alternative of adopting no exemption for small entities—and to specifically support any alternative criteria proffered, including by demonstrating the anticipated impact on consumers and small entities.

12. We also seek comment on whether to limit the exemption to only the equipment or service that is designed while an entity meets the requirements of any small business exemption we may adopt. If an entity offers for sale a new version, update or other iteration of the equipment or service, we seek comment on whether the update automatically should be covered by the exemption or whether the exemption should turn on whether the entity was still capable of meeting the exemption during the design phase of the new version, iteration, or update.

13. We seek comment on whether to make a permanent small entity exemption self-executing. If self-executing, entities would be able to raise the exemption during an enforcement proceeding but would otherwise not be required to formally seek the exemption before the Commission. In this scenario, the entity seeking the exemption would be required to determine on its own whether it qualifies as a small business concern.

14. We seek comment on the impact of a permanent exemption on providers of ACS, manufacturers of ACS equipment, and consumers. What percentage of, or which non-interconnected VoIP providers, wireline or wireless service providers, electronic messaging providers, and ACS equipment manufacturers would qualify as small business concerns under each size standard? Conversely, what percentage of or which providers of ACS or manufacturers of equipment used for ACS are not small business concerns under each size standard? For each ACS and ACS equipment market segment, what percentage of the market is served by entities that are not exempt using each size standard?

15. We seek comment on the compliance costs that ACS providers and ACS equipment manufacturers would incur absent a permanent exemption. What would the costs be for compliance with section 716 and section 717 across different providers of ACS and ACS equipment manufacturers if we decline to adopt any permanent

exemption or decline to make the temporary exemption permanent? In particular, what are the costs of conducting an achievability analysis, recordkeeping, and providing certifications?

16. We seek comment generally on the impact of a small business exemption on consumers. Are there ACS or ACS equipment that may significantly benefit people with disabilities that are provided or manufactured by entities that might be exempt? If so, what are the services or equipment or the types of services or equipment, and how would the exemption impact people with disabilities? Would a permanent exemption disproportionately impact people with disabilities in rural areas versus urban or suburban areas? How would a permanent exemption impact people with disabilities living on tribal lands? To what extent would a permanent exemption impact the ability of people with disabilities to access new ACS innovations or ACS equipment innovations? Will a permanent exemption have a greater impact on the accessibility of some segments of ACS or ACS equipment than others?

17. We intend to monitor the impact of any exemption, including whether it is promoting innovation as Congress intended or whether it is having unanticipated negative consequences on accessibility of ACS. While we propose not to time limit any exemption, we retain the ability to modify or repeal the exemption if doing so would serve the public interest and is consistent with Congressional intent. We seek comment on these proposals.

B. Section 718 Implementation

18. Under section 718, a mobile phone manufacturer that includes a browser, or a mobile phone service provider that arranges for a browser to be included on a mobile phone, must ensure that the browser functions are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. Congress provided that the effective date for these requirements is three years after the enactment of the CVAA, *i.e.,* October 8, 2013.

19. In enacting section 718, we believe that Congress carved out an exception to section 716 and delayed the effective date to address a special class of browsers for a specific subset of the disabilities community because of the unique challenges of achieving non-visually accessible solutions in a mobile phone and the relative youth of accessible development for mobile platforms. This technical complexity arises because three accessibility technologies, often developed by different parties, must be synchronized effectively together for a browser to be accessible to a blind user of a mobile phone: (1) An accessibility API of the operating system; (2) the implementation of that API by the browser; and (3) its implementation by a screen reader. Because non-visual accessibility is generally the most technically challenging form of accessibility to accomplish, an accessibility API is needed to render the underlying meaning of key elements of a graphical user interface in an alternate, non-visual form, such as synthetic speech or refreshable Braille. For example, while Microsoft has developed Microsoft Active Accessibility (MSAA), the dominant accessibility API on Windows desktop computers, it has not yet defined and deployed an accessibility API for the current Windows phone platform that can be utilized by browser and screen reader developers for that platform. Even after an API becomes available, a significant process of coordination, testing, and refinement is needed to ensure that the browser/server and screen reader/client components can interact in a comprehensive and robust manner.

20. Additional lead-time must also be built-in as this kind of technical development and coordination is needed on each mobile platform. Present technological trends have resulted in relatively short generations of mobile platforms, each benefiting from increasing miniaturization of hardware components and increased bandwidth for transmitting data to and from the cloud. Experimentation and innovation with new ways of maximizing the productivity of mobile platforms, given these technological trends, has made accessibility coordination difficult. Finally, additional challenges are presented by the technical limitations posed by mobile platforms (lower memory capacity, low-bandwidth constraints, smaller screens) coupled with the fact that web content often has to be specially formatted to run on mobile platforms.

21. In the context of discussing the development of accessible mobile phone options for persons who are blind, deaf-blind, or have low vision, the industry has acknowledged the technological shortcomings in the ability of both hardware and software to incorporate accessibility features in mobile phones. Specifically, TIA has indicated that ''[not] all mobile devices can support the additional fundamental components needed to provide a full screen reader feature; there may be limitations in the software platform or limitations in the accompanying hardware, *e.g.,* processing power, memory limitations.'' TIA also indicated that more advanced accessibility features are not easily integrated and require the development of specific software codes for each feature on each device. Sprint, however, asserts that over time, mobile phones will eventually evolve like personal computers have, from ''out-of-the-box'' systems to today's dynamic, highly customizable systems, as mobile device performance metrics such as processing speed, power, and memory capacity improve. In short, as mobile device technologies continue to evolve over time, corresponding improvements in hardware and software will improve accessibility in the future.

22. We seek comment on our proposed clarification that Congress added section 718 as an exception to the general coverage of Internet browsers as software subject to the requirements of section 716 for Internet browsers built in or installed on mobile phones used by individuals who are blind or have a visual impairment because of the unique challenges associated with achieving mobile access for this particular community. We also seek comment on the best way(s) to implement section 718, so as to afford affected manufacturers and service providers the opportunity to provide input at the outset, as well as to make the necessary arrangements to achieve compliance by the time the provisions go into effect.

23. We seek further comment on Code Factory's recommendation that manufacturers and operating system developers develop an accessibility API to foster the incorporation of screen readers into mobile platforms across different phones, which would render the web browser and other mobile phone functions accessible to individuals who are blind or visually impaired. Would an accessibility API simplify the process for developing accessible screen readers for mobile phones and if so, should there be a separate API for each operating system that supports a browser? Is there a standard-setting body to develop such APIs or would such a process have to be driven by the manufacturers of mobile operating system software? What are the technical challenges, for both software developers and manufacturers, involved in developing an accessibility API?

24. What are the specific technical challenges involved in developing screen reader software applications for each mobile platform (*e.g.,* iPhone,

Android, Windows Mobile)? What security questions are raised by the use of screen readers? Are there specific security risks posed to operating systems by the presence of screen readers? What types of technical support/customer service will mobile phone operators need to provide to ensure initial and continued accessibility in browsers that are built into mobile phones? Are there steps the Commission could take to facilitate effective, efficient, and achievable accessibility solutions?

25. We seek to better understand these technical complexities and how we can encourage effective collaboration among the service providers, and the manufacturers of end user devices, the operating system, the browser, screen readers and other stakeholders. We particularly welcome input on how the Commission can facilitate the development of solutions to the technical challenges associated with ensuring access to Internet browsers in mobile phones.

26. With respect to equipment and services covered by section 716, the *Accessibility Report and Order* gradually phases in obligations of covered entities with full compliance required on October 8, 2013 in order to encourage covered entities to implement accessibility features early in product development cycles, to take into account the complexity of these regulations, and to temper our regulations' effect on previously unregulated entities. We found this approach to be consistent with Commission precedent where we have utilized phase-in periods in similarly complex rulemakings. As we have stated above, we believe that Congress drafted section 718 as a separate provision from section 716 to emphasize the importance of ensuring access to mobile browsers for people who are blind or visually impaired because of the unique technical challenges associated with ensuring effective interaction between browsers and screen readers operating over a mobile platform. Given these complex technical issues, we seek comment on what steps we should take to ensure that the mobile phone industry will be prepared to implement accessibility features when section 718 becomes effective on October 8, 2013.

C. Interoperable Video Conferencing Services

1. Meaning of Interoperable

27. In the *Accessibility NPRM,* the Commission asked how to define ''interoperable'' in a manner that is faithful to both the statutory language and the broader purposes of the CVAA, to ensure that ''such services may, by themselves, be accessibility solutions'' and ''that individuals with disabilities are able to access and control these services'' as Congress intended. Many commenters appear to consider ''inter-platform, inter-network, and inter-provider'' as requisite characteristics of interoperability. ITI suggests that ''interoperability between platforms is not currently achievable,'' but that Congress recognized that some forms of accessibility will take time and that ''[t]his is an example of such a situation.'' We are concerned that this proposed definition would exclude virtually all existing video conferencing services and equipment from the accessibility requirements of section 716, which we believe would be contrary to Congressional intent.

28. We believe that interoperability is a characteristic of usability for many individuals who are deaf or hard of hearing and for whom video conferencing services are, by themselves, accessibility solutions. We also agree with Consumer Groups that ''[w]ithout interoperability, communication networks [are] segmented and require consumers to obtain access to multiple, closed networks using particularized equipment.'' For example, video relay service (''VRS'') equipment users must obtain and use other video conferencing services and equipment to engage in real-time video communication with non-VRS-equipment users. In addition to possibly defining ''interoperable'' as ''inter-platform, inter-network, and inter-provider,'' ITI also suggests that the term ''interoperable'' could be defined as ''interoperable with [VRS] or among different video conferencing services.'' As an alternative, the IT and Telecom RERCs suggest that a system that publishes its standard and allows other manufacturers or service providers to build products or services to work with it should be considered interoperable.

29. Accordingly, we seek comment on the following alternative definitions of ''interoperable'' in the context of video conferencing services and equipment used for those services: (1) ''Interoperable'' means able to function inter-platform, inter-network, and inter-provider; (2) ''interoperable'' means having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or (3) ''interoperable'' means able to connect users among different video conferencing services, including VRS.

30. We seek comment on each of the above proposed definitions of ''interoperable.'' Should only one of the proposed definitions be adopted, and should we reject the other two definitions, or should we adopt multiple definitions and find that video conferencing services are interoperable as long as any one of the three definitions is satisfied? In other words, should we consider the three proposed definitions as three alternative tests for interoperability? In regard to the first alternative—''inter-platform, inter-network, and inter-provider''—we seek comment on the extent to which video conferencing services or equipment must be different or distinct to qualify under this definition. In regard to the second alternative, when does a standard determine interoperability? Is publication by a standards-setting body enough, even if only one manufacturer or service provider follows that standard? If a manufacturer or service provider publishes a standard and invites others to utilize it, is that enough to establish interoperability? If not, is interoperability established as soon as a second manufacturer or service provider utilizes the standard? If not, what is enough to establish interoperability? If two or more manufacturers or service providers agree to a standard without publication, is interoperability established? If not, is interoperability established if they invite others to receive a private copy of the standards, but do not publish the standards for public consumption? If video conferencing services can be used to communicate with public safety answering points, does that establish interoperability? If not, what else must be done to establish interoperability? Does the ability to connect to VRS make a video conferencing service ''interoperable'' or ''accessible'' or both? If users of different video conferencing services, including VRS, can communicate with each other, does that establish interoperability, even if there are no set standards? If communications among different services is not enough, what then is enough to establish interoperability?

31. Interest in and consumer demand for cross-platform, network, and provider video conferencing services and equipment continues to rise. We do not believe that interoperability among different platforms will ''hamper service providers' attempts to distinguish themselves in the marketplace and thus hinder innovation.'' While we consider this matter more fully in this *FNPRM,*

we urge industry ''to develop standards for interoperability between video conferencing services as it has done for text messaging, picture and video exchange among carriers operating on different technologies and equipment.'' We also urge industry, consumers, and other stakeholders to identify performance objectives that may be necessary to ensure that ''such services may, by themselves, be accessibility solutions'' and ''that individuals with disabilities are able to access and control these services'' as Congress intended. In other words, what does ''accessible to and usable by individuals with disabilities'' mean in the context of interoperable video conferencing services and equipment? Are accessibility performance and other objectives different for ''interoperable'' video conferencing services? For example, does accessibility for individuals who are deaf or hard of hearing include being enabled to connect with an interoperable video conferencing service call through a relay service other than VRS? How can we ensure that video conferencing services and equipment are accessible to people with other disabilities, such as people who are blind or have low vision, or people with mobility, dexterity, cognitive, or intellectual disabilities? Notwithstanding existing obligations under the Act, we propose that industry considers accessibility alongside the technical requirements and standards that may be needed to achieve interoperability so that as interoperable video conferencing services and equipment come into existence, they are also accessible. Interoperable video conferencing services and equipment, when offered by providers and manufacturers, must be accessible to and usable by individuals with disabilities, as required by section 716, and such providers and manufacturers are subject to the recordkeeping and annual certification requirements of section 717 starting on the effective date of these rules.

2. Coverage of Video Mail

32. In the *Accessibility NPRM,* the Commission sought comment on whether services that otherwise meet the definition of interoperable video conferencing services but that also provide non-real-time or near real-time functions (such as ''video mail'') are covered and subject to the requirements of section 716. If such functions are not covered, the Commission asked whether it should, similar to what it did in the section 255 context, assert its ancillary jurisdiction to cover video mail.

33. We agree with commenters that non-real-time or near-real-time features or functions of a video conferencing service, such as video mail, do not meet the definition of ''real-time'' video communications. Nonetheless, we do not have a sufficient record as to whether we should exercise our ancillary jurisdiction to require that a video mail service be accessible to individuals with disabilities when provided along with a video conferencing service as the Commission did in the context of section 255 in regard to voice mail, and we now seek comment on this issue. The record is also insufficient to decide whether our ancillary jurisdiction extends to require other features or functions provided along with a video conferencing service, such as recording and playing back video communications on demand, to be accessible, and we seek comment on this issue as well. Do we have other sources of direct authority, besides section 716, to require that video mail and other features, such as recording and playing back video communications, are accessible to individuals with disabilities? Would the failure to ensure accessibility of video mail and the related equipment that performs these functions undermine the accessibility and usability of interoperable video conferencing services? Similarly, would the failure to ensure accessibility of recording and playing back video communications on demand and the related equipment that performs these functions undermine the accessibility and usability of interoperable video conferencing services?

D. Accessibility of Information Content

34. Section 716(e)(1)(B) of the Act requires the Commission to promulgate regulations providing that advanced communications services and the equipment and networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks. In the *Accessibility Report and Order,* we adopt this broad rule, incorporating the text of section 716(e)(1)(B), as proposed in the *Accessibility NPRM.* Here, we seek comment on the IT and Telecom RERCs' suggestion that we interpret the phrase ''may not impair or impede the accessibility of information content'' to include the concepts set forth below. IT and Telecom RERC has submitted a proposal regarding how we should interpret and apply our accessibility of information content guidelines, including the following recommendations that covered entities:

- Shall not install equipment or features that can't or don't support accessibility information;
- Shall not configure network equipment such that it would block or discard accessibility information;
- Shall display any accessibility related information that is present in an industry recognized standard format;
- Shall not block users from substituting accessible versions of content; and
- Shall not prevent the incorporation or passing along of accessibility related information.

E. Electronically Mediated Services

35. In the *Accessibility Report and Order,* we declined to expand our definition of peripheral devices to mean ''devices employed in connection with equipment covered by this part, including software and electronically mediated services, to translate, enhance, or otherwise transform advanced communications services into a form accessible to people with disabilities'' as the IT and Telecom RERCs propose). Because the record is insufficient, we seek further comment on the IT and Telecom RERCs' proposal and on the definition of ''electronically mediated services.'' We also seek comment on the extent to which electronically mediated services are covered under section 716 and how they can be used to transform ACS into an accessible form.

F. Performance Objectives

36. Section 716(e)(1)(A) of the Act provides that in prescribing regulations for this section, the Commission shall ''include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities.'' In the *Accessibility NPRM,* the Commission sought comment on how to make its performance standards testable, concrete, and enforceable. In the *Accessibility Report and Order,* we incorporated into the performance objectives the definitions of accessible, compatibility, and usable, in §§ 6.3 and 7.3 of the Commission's rules. In their Reply Comments, however, the IT and Telecom RERCs argued that, instead of relying on our part 6 requirements, the Commission's performance objectives should include testable criteria. The IT and Telecom RERCs proposed specific ''Aspirational Goal and Testable Functional Performance Criteria'' in

their Reply Comments. We seek comment on those criteria.

G. Safe Harbors

37. As explained in the *Accessibility Report and Order,* we decline at this time to adopt technical standards as safe harbors. However, we recognize the importance of the various components in the ACS architecture working together to achieve accessibility and seek comment on whether certain safe harbor technical standards can further this goal.

38. Specifically, we seek comment on whether, as ITI proposes, ACS manufacturers can ensure compliance with the Act ''by programmatically exposing the ACS user interface using one or more established APIs and specifications which support the applicable provisions in ISO/IEC 13066–1:2011.'' Other standards may also form the basis of a safe harbor for compliance with section 716, including the ''W3C/WAI Web Content Accessibility Guidelines, Version 2.0 and section 508 of the Rehabilitation Act of 1973, as amended.'' We seek comment on the use of these standards, and any others, as safe harbors for compliance with section 716.

39. For the purpose of keeping safe harbors up-to-date with technology and ensuring ongoing compliance with the Act, we seek comment on whether ''it should be the responsibility of the appropriate manufacturer or standards body to inform the Commission when new, relevant APIs and specifications are made available to the market that meet the * * * standard.'' If we decide to adopt a safe harbor based on recognized industry standards, we seek comment on how the industry, consumers, and the Commission can verify compliance with the standard. Should entities be required to self-certify compliance with a safe harbor? Is there a standard for which consumers can easily test compliance with an accessible tool? What are the compliance costs for ACS manufacturers and service providers of the Commission adopting safe harbor technical standards based on recognized industry standards? Will adopting safe harbor technical standards based on recognized industry standards reduce compliance costs for ACS manufacturers and service providers?

40. We recognize tension may exist between the relatively slow standards setting process and the rapid pace of technological innovation. How should the Commission account for the possibility that the continued development of a standard on which a safe harbor is based may be outpaced by technology? Should we for purposes of determining compliance with a safe harbor apply only safe harbors that were recognized industry standards at the time of the design phase for the equipment or service in question? Is there another time period in the development of the equipment or service that is more appropriate?

H. Section 718 Recordkeeping and Enforcement

41. *Background.* In the *Accessibility NPRM,* the Commission invited comment on recordkeeping requirements for section 718 covered entities. The Commission noted that recordkeeping requirements for section 718 entities would be considered further in light of comments on general section 718 implementation. The Commission also sought comment on informal complaint, formal complaint, and other general requirements for complaints alleging violations of section 718 and the Commission's implementing rules.

42. *Discussion.* In the *Accessibility Report and Order,* we adopt the same recordkeeping and complaint procedures for section 718 covered entities that we adopt for section 716 covered entities. Specifically, we adopt recordkeeping requirements for section 718 covered entities that go into effect one year after the effective date of the rules adopted in the *Accessibility Report and Order.* We also adopt informal complaint and formal complaint procedures as well as other general requirements for complaints filed against section 718 covered entities for violations of section 718 and the Commission's implementing rules. These complaint procedures go into effect for section 718 covered entities on October 8, 2013, three years after the CVAA was enacted.

43. In this *FNPRM,* we seek comment on the implementation of section 718 specifically. In this section, we invite comment on whether the section 718 recordkeeping requirements, which we adopt in the *Accessibility Report and Order,* should be retained or altered in light of the record developed in response to this *FNPRM* on section 718. We ask that parties suggesting changes to the rules provide an assessment of the relative costs and benefits associated with (1) the rule they wish to see changed and (2) the alternative that they propose.

II. Procedural Matters

Ex Parte Rules—Permit-But-Disclose Proceeding

44. Pursuant to 47 CFR 1.1200 *et seq.,* this matter 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 § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules 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.

Initial Regulatory Flexibility Analysis

45. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities that might result from adoption of the rules proposed in the *Further Notice of Proposed Rulemaking (''FNPRM'').* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the applicable deadlines for initial comments, or reply comments, as specified in the *FNPRM.*

The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *FNPRM* and this IRFA (or summaries thereof) will be published in the **Federal Register**.

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

46. The *Accessibility Report and Order* implements Congress' mandate that people with disabilities have access to advanced communications services (''ACS'') and ACS equipment. Specifically, the rules adopted in the *Accessibility Report and Order* implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (''CVAA'').

47. The *Accessibility Report and Order* implements the requirements of section 716 of the Act, which requires providers of ACS and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Act, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716, and 718.

48. The *Accessibility Report and Orde*r finds the record insufficient to adopt a permanent exemption or to adopt the criteria to be used to determine which small entities to exempt. The *Accessibility Report and Order* therefore temporarily exempts all manufacturers of ACS equipment and all providers of ACS from the obligations of section 716 if they qualify as small business concerns under the SBA rules and size standards for the industry in which they are primarily engaged. The *Accessibility Report and Order* indicated that such an exemption was necessary to avoid the possibility of unreasonably burdening ''small and entrepreneurial innovators and the significant value that they add to the economy.'' This self-executing exemption would be applied until the development of a record to determine whether small entities should be permanently exempted and, if so, what criteria should be used to define small entities.

49. The *Accessibility Report and Order* indicated that SBA has established maximum size standards used to determine whether a business concern qualifies as a small business concern in its primary industry. The SBA has generally adopted size standards based on the maximum number of employees or maximum annual receipts of a business concern. The SBA categorizes industries for its size standards using the North American Industry Classification System (''NAICS''), a ''system for classifying establishments by type of economic activity.'' The *Accessibility Report and Order* identified some NAICS codes for possible primary industry classifications of ACS equipment manufacturers and ACS providers and the relevant SBA size standards associated with the codes. The definitions for each NAICS industry classification can be found by entering the six digit NAICS code in the ''2007 NAICS Search'' function available at the NAICS homepage, *http://www.census.gov/eos/www/naics/index.html.* The U.S. Office of Management and Budget has revised NAICS for 2012, however, the codes and industry categories listed herein are unchanged. OMB anticipates releasing a 2012 NAICS United States Manual or supplement in January 2012. *See* 13 CFR 121.201 for a full listing of SBA size standards by six-digit NAICS industry code. The standards listed in this column establish the maximum size an entity in the given NAICS industry may be to qualify as a small business concern.

NAICS classification	NAICS code	SBA size standard
Services		
Wired Telecommunications Carriers	517110	1,500 or fewer employees.
Wireless Telecommunications Carriers (except satellites)	517210	1,500 or fewer employees.
Telecommunications Resellers	517911	1,500 or fewer employees.
All Other Telecommunications	517919	$25 million or less in annual receipts.
Software Publishers	511210	$25 million or less in annual receipts.
Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees.
Data Processing, Hosting, and Related Services	518210	$25 million or less in annual receipts.
Equipment		
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	334220	750 or fewer employees.
Electronic Computer Manufacturing	334111	1,000 or fewer employees.
Telephone Apparatus Manufacturing	334210	1,000 or fewer employees.
Other Communications Equipment Manufacturing	334290	750 or fewer employees.
Software Publishers	511210	$25 million or less in annual receipts.
Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees.

50. The *Accessibility Report and Order* indicated that this temporary exemption is self-executing. Under this approach, covered entities must determine whether they qualify for the exemption based upon their ability to meet the SBA's rules and the size standard for the relevant NAICS industry category for the industry in which they are primarily engaged. Entities that manufacture ACS equipment or provide ACS may raise this temporary exemption as a defense in an enforcement proceeding. Entities claiming the exemption must be able to demonstrate that they met the exemption criteria during the estimated start of the design phase of the lifecycle of the product or service that is the subject of the complaint. The *Accessibility Report and Order* stated that if an entity no longer meets the exemption criteria, it must comply with section 716 and section 717 for all subsequent products or services or substantial upgrades of products or services that are in the development phase of the product or service lifecycle, or any earlier stages of development, at the time they no longer meet the criteria. The temporary exemption will begin on the effective date of the rules adopted in the *Accessibility Report and*

Order and will expire the earlier of the effective date of small entity exemption rules adopted pursuant to the *FNPRM* or October 8, 2013. The *Accessibility Report and Order* states that the temporary exemption enables us to provide relief to those entities that may possibly lack legal, financial, or technical capability to comply with the Act until we further develop the record to determine whether small entities should be subject to a permanent exemption and, if so, the criteria to be used for defining which small entities should be subject to such permanent exemption.

51. In the *FNPRM* we seek comment on whether to make permanent the temporary exemption for manufacturers of ACS equipment and providers of ACS, adopt one or part of alternative size standards the Commission adopted in other contexts, or to adopt any permanent exemption for such entities, subject to repeal or modification by the Commission as necessary to meet Congress's intent. The *FNPRM* also seeks comment on the impact of an exemption on providers of ACS, manufacturers of ACS equipment, and consumers.

52. Specifically, the *FNPRM* seeks comment on whether to permanently exempt from the obligations of section 716, manufacturers of ACS equipment and providers of ACS that qualify as small business concerns under the SBA's rules and size standards and, if so, whether to utilize the size standards for the primary industry in which they are engaged under the SBA's rules as set forth in the *Accessibility Report and Order* as explained above. The *FNPRM* notes that SBA criteria were established for the purpose of determining eligibility for SBA small business loans and asks whether these same criteria are appropriate for the purpose of relieving covered entities from the obligations associated with achievability analyses, recordkeeping, and certifications.

53. The *FNPRM* also seeks comment on alternative size standards that the Commission has adopted in other contexts. The Commission has adopted alternative size standards for very small and small businesses for eligibility for spectrum bidding credits. These alternative sizes include average gross revenue over the preceding three years of $3 million, $15 million, or $40 million, depending on the wireless service. The Commission has also used a different size standard in the spectrum context, specifically for entities that, along with affiliates, have $6 million or less in net worth and no more than $2 million in annual profits (after federal income tax and excluding carry over losses) each year for the previous two years. The Commission has also used different size standards to define small cable companies and small cable systems, and the Act includes a definition of small cable system operators. The Commission has defined small cable companies as a cable company serving 400,000 or fewer subscribers nationwide, and small cable systems as a cable system serving 15,000 or fewer subscribers. The Act defines small cable system operators as ''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 *FNPRM* seeks comment on whether any of these alternatives—in whole, in part, or in combination—should form the basis for a permanent small entity exemption from the requirements of section 716.

54. The *FNPRM* also asks if these size criteria are not appropriate for a permanent exemption, what the appropriate size criteria would be, and whether there are other criteria that should form the basis of a permanent exemption?

55. The *FNPRM* seeks comment on the impact of a permanent exemption on providers of ACS, manufacturers of ACS equipment, and consumers. Specifically, the *FNPRM* seeks comment on the qualitative and quantitative impact of a permanent exemption based on the temporary exemption, on any of the alternatives discussed, or on some other possible size standard will impact industry sectors engaged in ACS. For example, what percentage of, or which non-interconnected VoIP providers, wireline or wireless service providers, electronic messaging providers, and ACS equipment manufacturers would qualify as small business concerns under each size standard? Conversely, what percentage of or which providers of ACS or manufacturers of equipment used for ACS are not small business concerns under each size standard? For each ACS and ACS equipment market segment, what percentage of the market is served by entities that are not exempt using each size standard?

56. The *FNPRM* also seeks comment on the compliance costs that ACS providers and ACS equipment manufacturers would incur absent a permanent exemption. What would the costs be for compliance with section 716 and section 717 across different providers of ACS and ACS equipment manufacturers if we decline to adopt any permanent exemption or decline to make the temporary exemption permanent? In particular, what are the costs of conducting an achievability analysis, recordkeeping, and providing certifications?

57. We note that, in addition to the small entity exemption provision, the CVAA sets forth achievability factors that may also mitigate adverse impacts and reduce burdens on small entities. Under the achievability factors, an otherwise covered entity can demonstrate that accessibility is unachievable and therefore avoid compliance. The first and second factors are particularly relevant to small entities and the special circumstances they face. The first factor considers the nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question, and the second considers the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question.

58. The *FNPRM* seeks further comment on several issues raised in the implementation of sections 716 and 717 of the Act, as well as to seek initial comment on implementing section 718 of the Act. Specifically, the *FNPRM* seeks comment on three proposed alternative definitions for the term ''interoperable'' in the context of video conferencing services and equipment used for those services: (1) ''Interoperable'' means able to function inter-platform, inter-network, and inter-provider; (2) ''interoperable'' means having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or (3) ''interoperable'' means able to connect users among different video conferencing services, including VRS. The *FNPRM* also seeks comment on whether we should exercise our ancillary jurisdiction to require that a video mail service be accessible to individuals with disabilities when provided along with a video conferencing service as we did in the context of section 255 in regard to voice mail. The *FNPRM* seeks comment on several proposals to (1) extend our accessibility of information content guidelines to cover additional concepts; (2) expand our definition of peripheral devices to include electronically mediated services; (3) expand our Part 6 requirements to include testable criteria. We also seek to develop a record on a proposal to define technical standards for safe harbors using the W3C/WAI Web guidelines or ISO/IEC

13066–1:2011. Finally, we seek comment on our proposal to implement section 718 of the CVAA consistent with the recordkeeping requirements adopted in the *Accessibility Report and Order.*

59. We seek comment on the preceding topics because even though at present we do not have enough information to propose a specific rule, we believe that during the effective period of the temporary small business exemption, information about these topics will in all likelihood become crucial and indeed determinative of how the implementation of the exemption will be carried out in concrete terms. For example, within the exemption period, technological innovations and advances may make interoperability more available in providing improved access to the deaf/blind community in service areas where interoperability is not yet feasible for technological reasons. Also, technological advances in coverage of video mail or in the availability of safe harbors may become more available and more efficiently operational after the exemption period than they are at present, and thus, during the temporary exemption, these various areas of increased availability and increased effective impact may affect the provision of ACS to the deaf and/or blind community. Hence, because these topics may become pivotal and crucial after the exemption period, we choose to seek comment on these topics at this time because based on our assessment of the admittedly scant record to date, we conclude that such comment may effectively guide the Commission toward a more comprehensive and efficient implementation of the temporary exemption. We also seek comment on implementing section 718, which requires a mobile phone manufacturer that includes a browser, or a mobile phone service provider that arranges for a browser to be included on a mobile phone, to ensure that the browser functions are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. Under section 718, mobile phone manufacturers or service providers may achieve compliance by relying on third party applications, peripheral devices, software, hardware, or customer premises equipment. Congress provided that the effective date for these requirements is three years after the enactment of the CVAA, *i.e.,* October 8, 2013.

B. Legal Basis

60. The legal basis for any action that may be taken pursuant to the *FNPRM* is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, 718 of the Communications Act of 1934, as Amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, 619.

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

61. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that face possible significant economic impact by the adoption of proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

62. To assist the Commission in analyzing the total number of small entities potentially affected by the proposals in the *FNPRM,* we ask commenters to estimate the number of small entities that may be affected. To assist in assessing the nature and number of small entities that face possible significant economic impact by the proposals in the *FNPRM,* we seek comment on the industry categories below and our estimates of the entities in each category that can, under relevant SBA standards or standards previously approved by the SBA for small businesses, be classified as small. Where a commenter proposes an exemption from the requirements of section 716 and in effect section 717, we also seek estimates from that commenter on the number of small entities in each category that would be exempted from compliance with section 716 and in effect section 717 under the proposed exemption, the percentage of market share for the service or product that would be exempted, and the economic impact, if any, on those entities that are not covered by the proposed exemption. While the *FNPRM* and this IRFA seek comment on whether and how the Commission should permanently exempt small entities from the requirements of section 716 and in effect section 717 for the purposes of building a record on that issue, we will assume, for the narrow purpose of including a thorough regulatory impact analysis in this IRFA, that no such exemptions will be provided.

63. Many of the issues raised in the *FNPRM* relate to clarifying obligations on entities already covered by the *Accessibility Report and Order,* which may affect a broad range of service providers and equipment manufacturers. The *FNPRM* seeks comment on making permanent a temporary exemption for small entities that qualify as small business concerns under the SBA's rules and small business size standards, or some other criteria. Therefore, it is possible that all entities that would be required to comply with section 716 and section 717, but are small business concerns or qualify as small entities under some other criteria, will be exempt from the provisions of the proposed rules implementing section 716 and section 717. The CVAA, however, does not provide the flexibility for the Commission to adopt an exemption for small entities from compliance with section 718. Therefore, we estimate below the impact on small entities absent a permanent exemption from section 716 and section 717, and small entities that may have to comply with section 718. Specifically, we analyze the number of small businesses engaged in manufacturing that may be affected by the *FNPRM,* absent a permanent small entity exemption, including manufacturers of equipment used to provide interconnected and non-interconnected VoIP, electronic messaging, and interoperable video conferencing services. We then analyze the number of small businesses engaged as service providers that may be affected by the *Accessibility Report and Order,* absent a permanent small entity exemption, including providers of interconnected and non-interconnected VoIP, electronic messaging services, interoperable video conferencing services, wireless services, wireline services, and other relevant services.

64. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. 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 1,621,315 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 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

1. Equipment Manufacturers

a. Manufacturers of Equipment To Provide VoIP

65. Entities manufacturing equipment used to provide interconnected VoIP, non-interconnected VoIP, or both are generally found in one of two Census Bureau categories, ''Electronic Computer Manufacturing'' or ''Telephone Apparatus Manufacturing.'' We include here an analysis of the possible significant economic impact of our proposed rules on manufacturers of equipment used to provide both interconnected and non-interconnected VoIP because it is not possible to separate available data on these two manufacturing categories for VoIP equipment. Our estimates below likely greatly overstate the number of small entities that manufacture equipment used to provide ACS, including interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as possible.

66. *Electronic Computer Manufacturing.* The Census Bureau defines this category to include ''establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid. * * * The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product.''

67. In this category, the SBA deems and electronic computer manufacturing business to be small if it has 1,000 employees or less. For this category of manufacturers, Census data for 2007 show that there were 421 establishments that operated that year. Of those 421, 384 had 100 or fewer employees and 37 had 100 or more employees. On this basis, we estimate that the majority of manufacturers of equipment used to provide electronic messaging services in this category are small.

68. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category to comprise ''establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.''

69. In this category, the SBA deems a telephone apparatus manufacturing business to be small if it has 1,000 or fewer employees. For this category of manufacturers, Census data for 2007 shows there were 398 such establishments in operation. Of those 398 establishments, 393 (approximately 99%) had 1,000 or fewer employees and, thus, would be deemed small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide VoIP in this category are small.

b. Manufacturers of Equipment To Provide Electronic Messaging

70. Entities that manufacture equipment (other than software) used to provide electronic messaging services are generally found in one of three Census Bureau categories: ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' ''Electronic Computer Manufacturing,'' or ''Telephone Apparatus Manufacturing.''

71. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 919 establishments in this category that operated for part or all of the entire year. Of this total, 771 had less than 100 employees and 148 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

72. *Electronic Computer Manufacturing.* The Census Bureau defines this category to include ''establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid. * * * The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product.''

73. In this category the SBA deems an electronic computer manufacturing business to be small if it has 1,000 or fewer employees. For this category of manufacturers, Census data for 2007 show that there were 421 such establishments that operated that year. Of those 421 establishments, 384 had 1,000 or fewer employees. On this basis, we estimate that the majority of the manufacturers of equipment used to provide electronic messaging services in this category are small.

74. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category to comprise ''establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.''

75. In this category the SBA deems a telephone apparatus manufacturing business to be small if it has 1,000 or fewer employees. For this category of manufacturers, Census data for 2007 shows that there were 398 such establishments that operated that year. Of those 398 establishments, 393 (approximately 99%) had 1,000 or fewer employees and, thus, would be deemed small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small.

c. Manufacturers of Equipment Used To Provide Interoperable Video Conferencing Services

76. Entities that manufacture equipment used to provide interoperable and other video conferencing services are generally found in the Census Bureau category: ''Other Communications Equipment Manufacturing.'' The Census Bureau defines this category to include: ''establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).''

77. *Other Communications Equipment Manufacturing.* In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees. For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments 406 had fewer than 100 employees and 46 had more than 100 employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.

2. Service Providers

a. Providers of VoIP

78. Entities that provide interconnected or non-interconnected VoIP or both are generally found in one of two Census Bureau categories, ''Wired Telecommunications Carriers'' or ''All Other Telecommunications.''

79. *Wired Telecommunications Carriers.* The Census Bureau defines this category 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. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''

80. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category, are small.

81. *All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category ''All Other Telecommunications (NAICS Code 517919)''comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry.''

82. In this category, the SBA deems a provider of ''all other telecommunications'' services to be small if it has $25 million or less in average annual receipts. For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small.

b. Providers of Electronic Messaging Services

83. Entities that provide electronic messaging services are generally found in one of the following Census Bureau categories, ''Wireless Telecommunications Carriers (except Satellites),'' ''Wired Telecommunications,'' or ''Internet Publishing and Broadcasting and Web Search Portals.''

84. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (''SMR'') Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

85. *Wired Telecommunications Carriers.* For the 2007 US Census definition of firms included in the category, ''Wired Telecommunications Carriers (NAICS Code 517110),'' see paragraph 35 above.

86. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these 3,188 firms, only 44 (approximately 1%) had 1,000 or more employees. While we could not find precise Census data on the number of firms in the group with 1,500 or fewer employees, it is clear that at least the 3,188 firms with fewer than 1,000 employees would be in that group. Thus, at least 3,144 of these 3,188 firms (approximately 99%) had 1,500 or fewer employees. On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

87. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category to include ''establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and

maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.''

88. In this category, the SBA deems an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has 500 or fewer employees. For this category of manufacturers, Census data for 2007 shows that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had 500 or fewer employees and, thus, would be deemed small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

89. *Data Processing, Hosting, and Related Services.* The Census Bureau defines this category to include ''establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services.''

90. In this category, the SBA deems a data processing, hosting, or related services provider to be small if it has $25 million or less in annual receipts. For this category of providers, Census data for 2007 shows that there were 14,193 such establishments that operated that year. Of those 14,193 firms, 12,985 had less than $10 million in annual receipts, and 1,208 had greater than $10 million. Although no data is available to confirm the number of establishments with greater than $25 million in receipts, the available data confirms the majority of establishments in this category were small. On this basis, the Commission estimates that approximately 96% of the providers of electronic messaging services in this category are small.

c. Providers of Interoperable Video Conferencing Services

91. Entities that provide interoperable video conferencing services are found in the Census Bureau Category ''All Other Telecommunications.''

92. *All Other Telecommunications.* For the 2007 U.S. Census definition of firms included in the category, ''All Other Telecommunications (NAICS Code 517919),'' see paragraph 37 above.

93. In this category, the SBA deems a provider of ''all other telecommunications'' services to be small if it has $25 million or less in average annual receipts. Census data for 2007 show that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers of interoperable video conferencing services are small.

3. Additional Industry Categories

a. Certain Wireless Carriers and Service Providers

94. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. The census category of ''Cellular and Other Wireless Telecommunications'' is no longer used and has been superseded by the larger category ''Wireless Telecommunications Carriers (except satellite).'' The Census Bureau defines this larger category to include ''establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.''

95. Census data for 2007 shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms the group with 1,500 or fewer employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) 1,500 or fewer employees. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

96. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for 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 licenses. One bidder claiming small business status won five licenses.

97. 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 that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

98. In addition, there are numerous incumbent site-by-site SMR licensees 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 services pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

99. *AWS Services (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. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as a small business. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note 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 has proposed 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.

100. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (''MEA'') licenses. 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 and closed in 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.

101. *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.

102. *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)) was conducted in 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 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

103. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed 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). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

104. *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 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.

105. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a ''small business,'' and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a ''very small business.'' SBA has approved these small business size

standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under section 309(j) of the Act to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

b. Certain Equipment Manufacturers and Stores

106. *Part 15 Handset Manufacturers.* Manufacturers of unlicensed wireless handsets may also become subject to requirements in this proceeding for their handsets used to provide VoIP applications. The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. Therefore, we will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

107. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees.'' Thus, under this size standard, the majority of firms can be considered small.

108. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: ''This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.'' The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having $9 million or less in annual receipts. According to Census Bureau data for 2007, there were 24,912 firms in this category that operated for the entire year. Of this total, 22,701 firms had annual sales of under $5 million; 570 had annual sales and 533 firms had sales of $5 million or more but less than $10 million, and 1,641 had annual sales of over 10 million. Thus, the majority of firms in this category can be considered small.

c. Wireline Carriers and Service Providers

109. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the NPRM. Thus under this category, the majority of these incumbent local exchange service providers can be considered small.

110. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more

than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

111. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

112. *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. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

113. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

114. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

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

116. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

117. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the

number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

d. Wireless Carriers and Service Providers

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

119. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and SMR Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

120. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

121. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The 2007 census also contains data for the specific category of ''Paging'' ''that is classified under the seven-number NAICS code 5172101. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action.

122. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and SMR Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

123. *Broadband Personal Communications Service.* The broadband 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 re-auction 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.

124. 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.

125. *Narrowband Personal Communications Services.* To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 Metropolitan Trading Areas and nationwide licenses. Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

126. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

127. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business 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 defined as 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 size standards. Auctions of Phase II licenses commenced on and closed in 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 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses. In 2007, the Commission conducted a fourth auction of the 220 MHz licenses. Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years (''small business'') received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $3 million for the preceding three years received a 35 percent discount on its winning bid (''very small business''). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007. In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

128. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards small business bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

129. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

130. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

131. *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.

132. *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''). For purposes of its analysis of the Rural Radiotelephone Service, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. Census data for 2007 shows 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 in the Rural Radiotelephone Service can be considered small.

133. *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 shows 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.

134. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (''LMDS''), the Digital Electronic Message Service (''DEMS''), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

135. *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 shows 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.

136. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

137. *Wireless Cable Systems. Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint

Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS''). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

138. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' For these services, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use the classifications ''firms'' does not track the number of ''licenses''.

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

140. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 174 entities winning licenses for 594 Metropolitan Statistical Area (''MSA'') licenses. Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

141. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in

the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

142. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

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

144. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

145. The second category, *i.e.,* ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

e. Cable and OVS Operators

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

147. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

148. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

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

150. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The OVS framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service

providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

f. Internet Service Providers, Web Portals and Other Information Services

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

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

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

154. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users. The SBA deems businesses in this industry with 500 or fewer employees small. According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with to 999 employees. Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

155. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services. The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 6,726 had annual receipts of under $25 million, and 155 had receipts between $25 million and $49,999,999 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our proposed actions.

156. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

157. We summarize below the recordkeeping and certification obligations of the *Accessibility Report and Order.* Additional information on each of these requirements can be found in the *Accessibility Report and Order.* These requirements will apply to all entities that must comply with section 716 and section 718.

158. Recordkeeping. The *Accessibility Report and Order* requires, beginning one year after the effective date of the *Accessibility Report and Order,* that each manufacturer of equipment used to provide ACS and each provider of such services subject to sections 255, 716, and 718 not otherwise exempt under the *Accessibility Report and Order,* maintain certain records. These records document the efforts taken by a manufacturer or service provider to implement sections 255, 716, and 718. The *Accessibility Report and Order* adopts the recordkeeping requirements of the CVAA, which specifically include: (1) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve

access. Additionally, while manufacturers and providers are not required to keep records of their consideration of the four achievability factors, they must be prepared to carry their burden of proof, which requires greater than conclusory or unsupported claims. Similarly, entities that rely on third party solutions to achieve accessibility must be prepared to produce relevant documentation.

159. These recordkeeping requirements are necessary to facilitate enforcement of the rules adopted in the *Accessibility Report and Order* and proposed in the *FNPRM.* The *Accessibility Report and Order* builds flexibility into the recordkeeping obligations by allowing covered entities to keep records in any format, recognizing the unique recordkeeping methods of individual entities. Because complaints regarding accessibility of a product or service may not occur for years after the release of the product or service, the *Accessibility Report and Order* requires covered entities to keep records for two years from the date the product ceases to be manufactured or a service is offered to the public. The *FNPRM* seeks comment on whether any of the recordkeeping and certification requirements should be modified for entities covered under section 718.

160. *Annual Certification Obligations.* The CVAA and the *Accessibility Report and Order* require an officer of providers of ACS and ACS equipment submit to the Commission an annual certificate that records are kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider is exempt from compliance with section 716 under applicable rules. The certification must be supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the entity with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information. The certification must be filed with the Consumer and Governmental Affairs Bureau on or before April 1 each year for records pertaining to the previous calendar year. The *FNPRM* seeks comment on whether any of the recordkeeping and certification requirements should be modified for entities covered under section 718.

161. *Costs of Compliance.* There is an upward limit on the cost of compliance. Under the CVAA and the *Accessibility Report and Order* accessibility is required for entities under section 716 and section 718 unless it is not achievable. Under two of the four achievability factors from the Act and adopted in the *Accessibility Report and Order,* which also apply to any rules adopted pursuant to this *FNPRM* implementing section 718, covered entities may demonstrate that accessibility is not achievable based on the nature and cost of steps needed or the technical and economic impact on the entity's operation. Entities that are not otherwise exempt or excluded under the *Accessibility Report and Order,* or subsequent to this *FNPRM,* must nonetheless be able to demonstrate that they conducted an achievability analysis, which necessarily requires the retention of some records.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

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

163. We note that the *FNPRM* continues and preserves the steps taken in the *Accessibility Report and Order* to minimize adverse economic impact on small entities. The *FNPRM* will continue to promote flexibility for all entities in several ways. The *FNPRM* does not alter the ability of an entity with obligations under section 716 to seek a waiver for products or services that are not designed primarily for ACS, and does not impact the conclusion in the *Accessibility Report and Order* that customized equipment is excluded. Further, small entities may continue to comply with both section 716 and section 718 by demonstrating that accessibility is not achievable, or may rely on third party software, applications, equipment, hardware, or customer premises equipment to meet their obligations under section 716 and section 718, if achievable. As stated below, the *FNPRM* also leaves unchanged the requirements adopted in the *Accessibility Report and Order* that allow covered entities to keep records in any format they wish as this flexibility affords small entities the greatest flexibility to choose and maintain the recordkeeping system that best suits their resources and their needs.

164. The *FNPRM* also seeks comment on making permanent the temporary exemption from the section 716 and section 717 obligations for all small entities that was adopted in the *Accessibility Report and Order.* Specifically, the *Accessibility Report and Order* minimized the economic impact on small entities by temporarily exempting entities that manufacture ACS equipment or provide ACS that, along with any affiliates, meet the criteria for a small business concern for their primary industry under SBA's rules and size standards. Correspondingly, the *FNPRM* now seeks to develop a record that would allow the Commission to determine whether to permanently minimize the impact on small entities that are subject to the requirements of sections 716.

165. The *FNPRM* also seeks comment on alternative approaches to the standards used to provide the temporary small business exemption even as it seeks to develop a record on whether to make the existing exemption a permanent one. In essence, the *FNPRM* looks to the temporary exemption as a proposal for a permanent exemption and seeks to develop record support for continuing to minimize the economic and regulatory impact on small entities. In considering alternatives to the approach proposed for a permanent exemption, the *FNPRM* seeks comment on how it can refine the proposed approach.

166. With respect to recordkeeping and certification requirements, and as described above, the *FNPRM* leaves unchanged the requirements adopted in the *Accessibility Report and Order* that allow covered entities to keep records in any format they wish. In the *Accessibility Report and Order,* we found that this approach took into account the variances in covered entities (*e.g.,* size, experience with the Commission), recordkeeping methods, and products and services covered by the CVAA. Moreover, we found that it also provided the greatest flexibility to small businesses and minimized the economic impact that the statutorily mandated requirements impose on small businesses. Correspondingly, we considered and rejected the alternative of imposing a specific format or one-size-fits-all system for recordkeeping that could potentially impose greater burdens on small businesses. Furthermore, the certification requirement is possibly less burdensome on small businesses than large, as it merely requires certification from an officer that the necessary

records were kept over the previous year; this is presumably a less resource intensive certification for smaller entities. The *FNPRM* seeks comment on whether any of the recordkeeping requirements should be modified for entities covered by section 718.

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

167. Section 255(e) of the Act, as amended, directs the United States Access Board (''Access Board'') to develop equipment accessibility guidelines ''in conjunction with'' the Commission, and periodically to review and update those guidelines. We view the Access Board's current guidelines as well as its draft guidelines as starting points for our interpretation and implementation of sections 716 and 717 of the Act, as well as section 255, but because they do not currently cover ACS or equipment used to provide or access ACS, we must necessarily adapt these guidelines in our comprehensive implementation scheme. As such, our rules do not overlap, duplicate, or conflict with either Access Board Final Rules, or (if later adopted) the Access Board Draft Guidelines. Where obligations under section 255 and section 716 overlap, for instance for accessibility requirements for interconnected VoIP, we clarify in the *Accessibility Report and Order* which rules govern the entities' obligations.

III. Ordering Clauses

168. It is ordered that, pursuant to the authority of sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619, this *Further Notice of Proposed Rulemaking* is hereby adopted.

169. It is further ordered that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this *Further Notice of Proposed Rulemaking* on or before 45 days after publication of the *Further Notice of Proposed Rulemaking* in the **Federal Register** and reply comments on or before 75 days after publication in the **Federal Register**.

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

List of Subjects in 47 CFR Part 14

Advanced communications services equipment, Individuals with disabilities, Manufacturers of equipment used for advanced communications services, Providers of advanced communications services, Recordkeeping and enforcement requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 14, as added elsewhere in this issue of the **Federal Register**, effective January 30, 2012 as follows:

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

1. The authority citation for part 14 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 208, 255, 617, 618.

2. Add subpart E to part 14 to read as follows.

Subpart E—Internet Browsers Built Into Telephones Used With Public Mobile Services

§ 14.60 Internet Browsers built into Mobile Phones.

(a) *Accessibility.* If a manufacturer of a telephone used with public mobile services (as such term is defined in section 710(b)(4)(B) of the Act) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subpart shall not impose any requirement on such manufacturer or provider—

(1) To make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or

(2) To make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications, or services).

(b) *Industry Flexibility.* A manufacturer or provider may satisfy the requirements of this subpart with respect to such telephone or services by—

(1) Ensuring that the telephone or services that such manufacture or provider offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

(2) Using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–1789–01]

RIN 0648–AY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the South Atlantic

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

ACTION: Amended proposed rule; request for comments.

SUMMARY: NMFS hereby amends a proposed rule published on December 1, 2011, to implement the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), the Golden Crab Fishery of the South Atlantic Region, the Dolphin and Wahoo Fishery off the Atlantic States, and the Pelagic *Sargassum* Habitat of the South Atlantic Region as prepared and submitted by the South Atlantic Fishery Management Council (Council). In November 2011, the Council's Scientific and Statistical Committee (SSC) met and determined the allowable biological catch (ABC) for wreckfish should be reduced to prevent overfishing from occurring. The proposed rule that was published on December 1, 2011 contained a variety of actions unrelated to the wreckfish ABC and those actions did not need to be delayed by further Council decisions with respect to the revised wreckfish