that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.601, in the table in paragraph (a):

■ a. Remove the entries for ''Basil, dried leaves'' and ''Basil, fresh leaves''.

■ b. Add alphabetically entries for ''Bulb vegetables, group 3–07'' and ''Herb subgroup 19A''.

The additions read as follows:

§ 180.601 Cyazofamid; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * *	*
Bulb vegetables, group 3–07 ...	2.0
* * * *	*
Herb subgroup 19A	90
* * * *	*

* * * * *

[FR Doc. 2016–01993 Filed 2–2–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GN Docket No. 09–51, WC Docket No. 07–25; FCC 15–151]

Pole Attachment Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *document,* the Commission builds on its prior efforts to harmonize pole attachment rates that cable and telecom service providers pay utility pole owners. The Communications Act of 1934, as amended (Act), contains two formulas for calculating pole attachment rates, a formula adopted in 1978 applicable to cable television systems solely providing cable service, and a formula adopted in 1996 applicable to telecommunications carriers providing telecommunications service.

DATES: Effective April 1, 2016.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–245, GN Docket No. 09–51 and FCC 15–151, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/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 FURTHER INFORMATION CONTACT: Jonathan Reel, Wireline Competition Bureau, Competition Policy Division, (202) 418–0637, or send an email to *jonathan.reel@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in GN Docket No. 09–51, WC Docket No. 07–245, and FCC 15–151, adopted November 17, 2015 and released November 24, 2015. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It is available on the Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. In this *Order on Reconsideration* (Order), the Commission builds on its prior efforts to harmonize pole attachment rates that cable and telecom service providers pay utility pole owners. The Communications Act of 1934, as amended (Act), contains two formulas for calculating pole attachment rates, a formula adopted in 1978 applicable to cable television systems solely providing cable service, and a formula adopted in 1996 applicable to telecommunications carriers providing telecommunications service. Following the implementation of the 1996 Act through 2011, rates calculated using the telecom rate formula have typically been higher than rates calculated using the cable formula in similar circumstances. In 2011, the Commission revised the formulas as described in greater detail below to improve efficiency, reduce potentially excessive costs of network deployment and accelerate broadband buildout, and eliminate the wide disparity between the telecom and cable rate formulas. The 2011 revisions sought to bring the telecom and cable rates into parity. In the intervening time, the Commission has seen that its revisions did not fully achieve that objective. Today, the Commission takes the next logical step in achieving the goals set forth in 2011.

2. As detailed below, the Commission takes these actions in response to a Petition for Reconsideration or Clarification in this proceeding. The rule revisions that the Commission adopts amend the Commission's rules by defining ''cost,'' for the purpose of calculating the rates that telecommunications carriers pay for pole attachments, as a percentage of fully allocated costs that will depend on whether the average number of attaching entities in a service area is 2, 3, 4, or 5. The rates that attachers pay to attach to poles are currently determined, among other things, by whether the attacher is a ''cable television system solely . . . provid[ing] cable service'' or a ''telecommunications

carrier providing telecommunications services.'' The Commission, in its 2011 *Report and Order and Order on Reconsideration* in this proceeding (*2011 Pole Attachment Order*) 80 FR 27626–01, May 14, 2015, sought to bring parity to pole attachment rates calculated using the telecom or cable rate formula so that all attachments rates would be at or near the cable rate formula level. The *2011 Pole Attachment Order* adopted cost allocators in the telecom rate formula that closely approximate the treatment of cost in the cable rate formula. However, these allocators applied only in situations where poles have 5 attaching entities (0.66 percent of cost) or 3 attaching entities (0.44 percent of cost). On June 8, 2011, the National Cable and Telecommunications Association (NCTA), COMPTEL, and tw telecom inc. (Petitioners) filed a petition for reconsideration or clarification of the rules adopted in the *2011 Pole Attachment Order,* asking the Commission either to clarify that 66 percent and 44 percent are ''illustrations'' of the new rule, or to revise the rules to ''provide corresponding cost adjustments to other entity counts.''

3. In response to NCTA's petition, and to the record developed in this proceeding, Commission now introduces new cost allocators for poles with 2 attaching entities (0.31 percent of costs) and 4 attaching entities (0.56 percent of cost). When the average number of attaching entities is a fraction, the percentage cost allocator will be located between the whole numbers at the point where it most closely approximates the cost used in the cable rate formula. This flexible series of cost allocators should more fully realize the intent of the Commission in its *2011 Pole Attachment Order* to bring parity to pole attachment rates at the cable rate formula level. The Commission also adopts this definition of cost to prevent pole owners from charging cable operators that also provide telecommunications service (including broadband Internet access service) pole attachment rental rates that can be approximately 70 percent higher than the cable rate under its existing rules.

4. The Commission additionally acts to support incentives for deployment of broadband facilities, particularly in rural areas, and to harmonize regulatory treatment between states where the Commission regulates the rates, terms, and conditions for pole attachments and states where such matters are regulated by the state. Subjecting cable operators to higher pole attachment rates merely because they also provide telecommunications services, such as broadband Internet access, could deter investment in states subject to Commission pole regulation, which would undermine the Commission's broadband deployment policy. By keeping pole attachment rates unified and low, the Commission furthers its overarching goal to accelerate deployment of broadband by removing barriers to infrastructure investment and promoting competition.

II. Background

5. On April 7, 2011, in its *2011 Pole Attachment Order,* the Commission comprehensively revised its rules governing the attachment of cable and telecommunications facilities to utility poles. The *2011 Pole Attachment Order* contains a comprehensive background section outlining pole attachment policy developments through 2011. Commission does not repeat that material herein. Instead, Commission incorporates that history by reference here, and preserves a brief background section outlining and describing the provisions, orders, and cases germane to this *Order on Reconsideration.*

6. In 1978, Congress added section 224 to the Act. As established in 1978, section 224 directed the Commission to ensure that the rates, terms, and conditions of attaching cable television systems' facilities to utility-owned poles were just and reasonable. Section 224 also identified the maximum rate for pole attachments as a percentage of fully-allocated costs. In 1987, the U.S. Supreme Court found that the cable rate formula adopted by the Commission provides pole owners with adequate compensation, and thus does not result in an unconstitutional taking.

7. The 1996 Act expanded the definition of pole attachments to include attachments by providers of telecommunications service, and granted both cable operators and telecommunications carriers an affirmative right of access to utility poles. The 1996 Act also included a separate provision for calculating a cost-based rate paid by telecommunications carriers—the telecom rate formula—which incorporates ''the cost of providing space on a pole.'' As implemented by the Commission, the telecom rate formula generally resulted in significantly higher pole rental rates than rates derived from the cable rate formula. The Commission concluded that cable systems that provided Internet access in addition to video services should continue to pay the cable rate; that conclusion was reversed on appeal but later upheld by the Supreme Court.

8. In the intervening years, the Commission considered a variety of possible reforms to its pole attachment regulations in light of their importance to the deployment of communications networks. The Commission issued a Notice of Proposed Rulemaking in 2007, to respond to petitions for rulemaking regarding pole access and incumbent LEC pole attachment issues, and to seek comment on pole rate issues. In 2010, in response to a directive in the American Recovery and Reinvestment Act of 2009, the Commission released the National Broadband Plan (NBP), identifying access to rights-of-way—including access to poles—as having a significant impact on the deployment of broadband networks. Accordingly, the NBP included several recommendations regarding pole attachment access, enforcement, and pricing policies to further advance broadband deployment. Following on the recommendations in the NBP, in its 2010 *Further Notice* the Commission sought comment on a variety of measures to speed access to poles and make pole rental rates as low and close to uniform as possible consistent with section 224 of the Act.

9. In the *2011 Pole Attachment Order,* the Commission sought, in pertinent part, to significantly reform its telecom rate regulations by reinterpreting the ambiguous term ''cost'' in the telecom rate formula in section 224(e) of the Act to yield telecom attachment rates ''lowered to more effectively achieve Congress' goals under the 1996 Act to promote competition and 'advanced telecommunications capability' by both wired and wireless providers by 'remov[ing] barriers to infrastructure investment.' '' In particular, the Commission sought to ''balance the goals of promoting broadband [deployment] . . . with the historical role that pole rental rates have played in supporting the investment in pole infrastructure.''

10. In order to promote broadband while ensuring that attaching entities continue to support the poles on which they depend, the *2011 Pole Attachment Order* adopted alternative methods for measuring cost, and provided that the method producing the higher rate is the one the parties use. Utilities thus receive the benefit of any difference between the methods. In this way, the Commission recognizes that telecommunications attachers have historically contributed to the capital costs of the pole network, and that the new telecom rate should not ''unduly burden [utility] ratepayers.'' Balancing the Commission decided under the first

of two acceptable methodologies to ''allow the pole owner to charge a monthly pole rental rate that reflects some contribution to capital costs'' while also reducing the telecom rate. The Commission settled on an approach that defines costs ''in terms of a percentage of the fully-allocated costs'' of the pole—specifically, 66 percent of fully-allocated costs in urban areas and 44 percent in non-urban areas. This measure of cost produces a rate that the Commission expected, based on the premise that the Commission's presumptive number of attachers would not be rebutted, ''[would], in general, approximate the cable rate'' and thereby promote network investment and broadband deployment.

11. The Commission also established a second, alternative measure of cost that utilities may use. This alternative approach is based on the principle of ''cost causation,'' under which the ''customer—the cost causer—pays a rate that covers'' the costs for which it is ''causally responsible.'' Under this approach, a pole owner may recover its administrative and maintenance costs through the telecom rate, but not capital costs other than those associated with make-ready expenses. The Commission also noted that capital costs caused by a telecommunications attacher have long been recovered through make-ready charges, which ''the utility itself sets'' without regard to ''any mandatory rate formula set by the Commission.'' Other capital costs (*i.e.,* rate of return, taxes, and depreciation) are properly excluded under a cost-causation approach because the pole owner would have incurred those costs ''regardless of the demand for attachments.'' Although the ''percentage of fully-allocated costs'' measure of cost discussed above will produce a higher telecom rate ''in most cases,'' if the cost causation-based approach yields a higher rate, utilities are allowed to charge up to that rate.

12. On February 26, 2013, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) rejected utilities' challenge to the Commission's action to bring the traditionally higher telecom rate more in line with the cable rate, concluding that ''[b]ecause the Commission's methodology is consistent with the unspecified cost terms contained in section 224(e), and the Commission's justifications are reasonable, the revision [to the telecom rate formula] warrants judicial deference.'' In particular, the court observed that section 224(e) is ''less specific'' than section 224(d) in prescribing how the statutory rate formula should be implemented. The court agreed with the Commission that ''the term 'cost' in section 224(e)(2) and (3) is necessarily ambiguous, and could thus 'yield a range of rates from the existing fully-allocated cost approach at the high end to a rate closer to incremental cost at the low end.''' The D.C. Circuit thus affirmed the Commission's interpretation and implementation of section 224(e).

13. On June 8, 2011, Petitioners filed the NCTA Petition, seeking reconsideration or clarification of the newly adopted cost allocation rule. The NCTA Petition points out that, when paired with the Commission's presumptive numbers of attachers (5 in urbanized and 3 in non-urbanized areas), the 66 percent and 44 percent cost allocators almost exactly reproduce the 7.4 percent of costs used as an input in the cable rate formula. The Petitioners report, however, that pole owners in fact often rebut the Commission's presumptions with much lower average numbers. For example, if the owner rebuts the urban presumption (5 attaching entities) with an actual count average of 2.6 attaching entities, the telecom rate can be as much as 70 percent higher than the cable rate. To ''achieve the Commission's goal of providing pole attachment rates that are close to uniform as possible, and to ensure that all attachers contribute similar costs to pole owners,'' the Petitioners ask the Commission to address this gap between the intended effect of the cost allocators and their function as applied by ceasing to distinguish between urbanized and non-urbanized areas.

14. Specifically, the Petitioners ask the Commission either to clarify that 66 percent and 44 percent are mere illustrations of the new rule, or to revise the rule to ''provide corresponding cost adjustments to other entity counts.'' The NCTA Petition presents a model rule with additional cost allocators for 4 and 2 attachments, each of which aligns costs with the Commission's cable rate formula as effectively as the current rule does for the Commission's presumptive averages of 5 urbanized and 3 non-urbanized attachments. In service areas where the number of attaching entities is not a whole number, petitioners' proposed cost allocator would be interpolated from the allocators of the nearest whole numbers of attaching entities. On June 20, 2011, the Commission sought comment on the NCTA Petition.

15. On February 26, 2015, the Commission adopted the *Open Internet Order,* which, among other things, concluded that ''retail broadband Internet access service is best understood today as an offering of a 'telecommunications service.' '' The *Open Internet Order* made clear that it did ''not itself require any party to increase the pole attachment rates it charges to attachers providing broadband Internet access service.'' A possible interpretation of the *Order,* however, could be that cable systems that also provide broadband Internet access service and previously were subject to the cable rate formula are now subject to the telecom rate formula. In the *Open Internet Order,* the Commission noted that Petitioners had already expressed concern that revisions to the telecom formula only fulfilled the Commission's expressed intent in the limited circumstances when there are either 5 or 3 attaching entities on a pole. The Commission stated in the *Open Internet Order* that, ''[t]o the extent that there is a potential for an increase in pole attachment rates for cable operators that also provide broadband Internet access service, we are highly concerned about its effect on the positive investment incentives that arise from new providers' access to pole infrastructure.'' In short, the Commission made plain that it took seriously parties' concerns that reclassification could have unintended consequences for pole attachment rates, and that this Petition might present an effective vehicle for giving the issue a closer look. In light of this development, parties were asked to refresh the record with regard to the NCTA Petition.

III. Discussion

16. The Commission adopts the Petitioners' proposal to broaden the use of cost allocators in the telecom rate formula. Specifically, the Commission adds cost allocators for poles with 2 and 4 attaching entities to augment the current cost allocators that target poles with 3 and 5 attaching entities. The Commission also provides that, for fractional attaching-entity averages, cost allocators are to be interpolated from the whole-number cost allocators. The Commission takes this step to further its goal of promoting consistent, cross-industry attachment rates that encourage deployment and adoption of broadband Internet access services by fulfilling the Commission's intent, expressed clearly in 2011 and upheld in court in 2013, to bring cable and telecom rates for pole attachments into parity at the cable-rate level.

A. The Petitioner's Proposal Solves the Problem of Rate Disparity

17. The Petitioners maintain, and the Commission agrees, that the cost allocators adopted in the *2011 Pole Attachment Order* perform as intended,

but only if the actual average numbers of attaching entities coincide with the Commission's presumptive average numbers of attaching entities. As NCTA recognizes, the cost allocators in the *2011 Pole Attachment Order* reflect and embody these presumptive averages. When 0.66 percent and .044 percent of fully-allocated costs are applied in tandem with the Commission's presumptions of 5 and 3 attaching entities in urban and non-urban areas, respectively, the results approximate cable rate formula outcomes, as intended.

18. There is widespread agreement that the real average number of attaching entities is regularly far lower than the Commission's presumptions, and that this disparity causes rates calculated with the telecom rate formula to be around 70 percent higher than rates calculated with the cable rate formula. NCTA also reports that, in reality, pole owners routinely rebut the Commission's presumptions with averages such as 2.6 attaching entities. No commenter disputes NCTA's claim or alleges that the number ''2.6'' is an outlier. Verizon reports several similarly frequent rebuttals to attacher numbers below three. Averages of 2.6 attaching entities rebut both the urban and non-urbanized presumptions, which casts doubt not only on the credibility of the presumptions, but on the validity of the underlying urbanized/non-urbanized distinction as well. Rebuttals that consistently show lower average numbers based on tracking actual attachments may reflect the fact that, under its rules, service territories count as ''urban'' if any part of them is urban. This approach dilutes the density of these nominally urban areas, and undercuts the Commission's original assumption that such areas would likely have a higher average of attaching entities.

19. Recognizing that the rate reforms of 2011 have failed to align the results of the two pole attachment rate formulas as fully as intended, the Commission adopts the Petitioners' proposal as a template for corrective measures. By introducing new cost allocators of 0.31 percent and 0.56 percent for poles with 2 and 4 attaching entities respectively, with interpolated allocators between the closest whole numbers for fractional averages, the Commission brings parity to pole attachment rates at the cable rate formula level. The Petitioners' proposed solution does not require us to revisit the presumptions themselves; these continue to perform as intended with the 66% and 44% cost allocators that the Commission adopted in 2011. The Commission therefore retains the presumptions for the same reasons the Commission adopted them in 2011: to ''expedite the process'' and to help utilities ''avert the expense'' of applying demographic categories. Broadening the effect of the cost allocation system as the NCTA Petition proposes will greatly reduce the effect of, and the need for, the rebuttals. This approach to defining ''cost'' for purposes of the telecom rate formula achieves results that are consistently close to the cable rate. The new system also satisfies the fundamental purposes for using presumptions: To reduce reporting and recordkeeping requirements, to minimize administrative burdens, and to provide a level of predictability and efficiency in calculating the appropriate rate.

B. The Reasons To Revise the Cost Allocation System

20. The Commission adopts this multiple cost-allocator approach for the same reasons that motivated the initial (but ultimately incomplete) reforms in 2011: To advance the deployment and adoption of broadband Internet access, which remains a fundamental policy goal that guides its implementation of the telecom rate formula. The Commission recognizes that pole rental rates are but one of many considerations underlying marketplace deployment decisions. That said, the Commission promotes broadband deployment on numerous fronts, and has sought public comment and advice on other measures to advance this overarching policy. When discussing pole attachments policy, the Commission refers consistently to incentives for investment. By the same token, it remains the Commission's policy to minimize disincentives to investment, including artificially high pole attachment rates. Lower pole rental rates serve to encourage broadband investment, and Commission continues to use its section 224 authority as one of the tools it brings to bear to on its broadband goals. The Commission also continues to support and subsidize deployment of broadband Internet access in high-cost areas. In contrast, increased pole attachment rates would ultimately be recovered from consumers, and could lead some consumers to cut back or even discontinue their service. Thus, the Commission views pole attachment rate reform as part of the Commission's fundamental mission to advance the availability and adoption of broadband in America.

21. The Commission also intends this action to avoid the unintended consequence of higher pole attachment rates for cable providers that also offer broadband Internet access service, in those cases where the utility rebuts the Commission's attaching party presumptions. Comcast, for example, asserts that ''[a]bsent grant of the NCTA/COMPTEL Petition, a costly and time consuming process will ensue whereby utilities will seek to rebut the Commission's attaching entity presumptions, and cable operator attachers will then seek to refute the utilities' attachment studies.'' And NCTA observes that, because most cable operators may become subject to the telecom rate, and large numbers of associated attachments are implicated, utilities would have increased incentives to rebut the Commission's presumed number of attachers in areas where they had not done so previously. As a result, this could lead to pole rate increases for both cable operators and pre-existing telecommunications carriers in those areas. In the *Open Internet Order,* the Commission acknowledged that reclassification could lead to attempted increases in pole attachment rates, and stated its intention to avoid such an increase. Aligning rates produced by the two rate formulas forestalls this potential increase.

22. The Commission also is concerned that unless it closes what one commenter refers to as the ''telecom formula loophole,'' the resulting rate disparity would, more broadly, frustrate the Commission's policy goals by artificially and incrementally deterring investment in states subject to Commission pole regulation in favor of investment in areas with more favorable state-regulated pole attachment regimes. As the Commission previously has observed, ''[c]ommenters report that many [states that have elected to exercise jurisdiction over pole attachments in lieu of the Commission] apply a uniform rate for all attachments used to provide cable and telecommunications services, and have done so by establishing a rate identical or similar to the Commission's cable rate formula.'' Thus, if the Commission's telecom rate frequently yielded rates materially above the cable rate, telecommunications service providers that operate in multiple states or are deciding where to enter the marketplace, would have an artificial disincentive to invest in states governed by the Commission's 2011 telecom rate rule relative to states that established a uniform rate identical or similar to the Commission's cable rate formula. Although the Commission's action in this *Order* will not guarantee complete

state-to-state uniformity, seeking to address artificial marketplace distortions in the manner that it does here, rather than via a higher telecom rate, accords with the Commission's broadband mandate and its overall policy balancing in this context.

23. Moreover, the record developed here demonstrates that pole owners routinely rebut the Commission presumptions with averages close to 2.6 attachers. This means that the Commission's standard examples of telecom rates, which presuppose fully-allocated costs and use the Commission's presumptions, have seriously underestimated the pre-reform disparity between cable- and telecom-rate outcomes. In this proceeding, the Commission has compared estimated telecom costs of 11.2 percent in urban areas and 16.9 percent in non-urban areas with fixed cable costs of 7.4 percent. Applying the 2.6 cost allocator that the record supports shows that the telecom rate formula cost estimate would have been 19.1 percent for both urban and rural areas. The discrepancy between the presumed numbers of attachers (5 in urban areas and 3 in rural areas) and actual numbers of attachers used in pole owner rebuttals and reported in the record (often at or close to 2.6) illustrates the substantial problem attachers face when applying the rate reform of the Commission's *2011 Pole Attachment Order.*

24. Along with the forgoing policy considerations, the Commission continues to seek to balance the ''legitimate concerns of pole owners and other parties'' by preserving incentives to invest in poles and avoiding the imposition of an undue burden on utility ratepayers. In 2011, the Commission ultimately concluded that the level of recovery provided by the cable rate best balanced its broadband deployment mandates and the concerns of pole owners and utility ratepayers. Consistent with that analysis, the Commission explains above that the cable rate frequently is lower than the telecom rate as it previously had been implemented by the Commission, and reducing the telecom rate to cable rate level would further numerous policy goals. The Commission further observed that the cable rate had not produced a ''shortage of pole capacity,'' and, therefore, approximating that rate in the telecom formula likely would not diminish pole owners' ''incentives to invest in poles.'' The Commission also found ''persuasive the views of consumer advocates . . . recommend[ing] that the cable rate 'should be used for all pole attachments.' ''

25. The Commission thus remains persuaded that utility cost recovery at the level of the cable rate best balances the relevant policy considerations. Consequently, the Commission rejects arguments that the rule revision, which will more consistently and accurately ensure that the Commission's policy goals are achieved, will somehow upset the Commission's intended balance, unfairly burden utility ratepayers, or undermine the sharing of infrastructure costs. Likewise, while some commenters observe that other aspects of the *2011 Pole Attachment Order* put downward pressure on the revenues electric utilities receive from incumbent LEC attachers, the Commission already accounted for that likelihood in its weighing of policies and conclusion that it was appropriate to permit capital cost recovery at the same level as under the cable rate.

26. Utilities dismiss this policy balancing on several grounds, none of which persuade the Commission. The Utilities Telecom Council (UTC) argues that pole attachment rental is insignificant compared to other operating costs of large cable companies. Electric Utilities state that capital expenditure, and not pole attachment rental, drives deployment, and that pole attachment rental accounts for less than 2 percent of the cost of deploying fiber optic cable. UTC argues that there has been only a slow rate of broadband deployment since the telecom rate was adjusted in 2011, which proves the futility of lowering pole attachment rates, and that any cost savings from lower pole attachment rates have not been passed on to consumers, but rather, as a result of industry consolidation, have been pocketed by providers instead.

27. The Commission is skeptical that sums alleged to ''unfairly and negatively impact utilities and their ratepayers'' are ''insignificant'' in the context of broadband deployment. While the record does not include quantifiable information regarding the exact effect on deployment of pole attachment rates, insofar as keeping attachment rates reasonable for cable companies prevents them from shelving even a small number of projects, the Commission would not consider that result ''insignificant.'' There remains room for improvement in the rate of broadband expansion, and the Commission cannot afford to dismiss the importance of even potentially small increments. Commenters state that cable companies continue to deploy facilities, and Commission intend to avert any destabilization of those plans that might arise from a large and sudden pole attachment rate increase. The Commission is particularly mindful of the potential for harm to rural areas, which are the least served areas in the nation, and where the most additional pole attachments are needed to reach additional customers.

28. Utilities further argue that granting the NCTA Petition would unfairly reduce their revenue from pole attachments. They argue that the *2011 Pole Attachments Order* has already reduced their recovery from the telecommunications rate, and expect that their revenue from broadband-only Internet service providers will also decline. The Commission finds these arguments unpersuasive. Telecommunications carriers account for only a little more that 10 percent of attaching entities. Leveling their rate down to the cable rate disrupts settled expectations far less than leveling up the rental rate for the much greater number of cable attachments. Although it is true that the new system will tend to lower rates negotiated under the telecom rate formula, they will settle at the level the Commission aimed for in 2011, when its stated goal was to ''minimize the difference in rental rates paid for attachments that are used to provide voice, data, and video services.''

29. Utilities argue that increasing demand for pole space should lead to increased prices, and that any downward rate adjustment runs counter to economic principles. The Commission attaches no significance to this assertion. The express reason for the statutory imposition of cost-based, regulated rates is to bypass the economic principle that '' 'public utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents . . . in the form of unreasonably high pole attachment rates.' '' By enacting cost-based rate formulas, Congress has already accounted for the economics of scarcity that so favor pole owners. Attachment rates agreed to by broadband-only providers before reclassification may indeed be called into question, but that is because these entities are now within the ambit of Section 224, and not because the Commission revises the method of cost allocation used in the telecom rate formula.

30. Utilities claim that ''downward pressure'' on rates ''weakens the predictability and timeliness of the access process'' but this argument makes little sense. Attachers pay (and owners recover) the entire cost of access through make-ready fees paid before the attacher's facilities are mounted on

poles. Because access costs have already been recovered through make-ready fees, pole attachment rental rates are concerned solely with the pole owner's recovery of operating costs; they should have nothing to do with the ''predictability and timeliness'' of access. In any case, a ''downward pressure'' on rates to a parity with the cable rate formula level is precisely the outcome that the *2011 Pole Attachment Order* sought to achieve and that the Commission intends this new cost allocation system to implement.

C. The Commission Has Authority To Adopt the Revised Telecom Rate Rule

31. The modified telecom rate rule adopted in this *Order* is consistent with section 224(e) of the Act. The fundamental purpose of section 224(e) is to ''ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments'' by telecommunications carriers used to provide telecommunications services. As described above, in regulating cost-based telecom attachment rates under section 224(e), Congress granted the Commission substantial discretion to implement section 224(e) based on the agency's policy expertise by leaving the definition of the relevant costs ambiguous. Employing that policy expertise, the Commission builds upon the underpinnings of the statutory interpretation relied upon by the Commission in 2011 in the telecom rate rule adopted here.

32. The *2011 Pole Attachment Order* began by identifying a range of reasonable rates that could result from different definitions of ''cost'' for purposes of section 224(e). Within that range of permissible outcomes, the telecom rate rule ultimately adopted in 2011 involved the comparison of the rate yielded by two calculations, with utilities permitted to charge the higher of the two. Section 1.1409(e)(2)(i) specifies the first calculation, which the Commission anticipated would approximate the cable rate. Section 1.1409(e)(2)(ii) specifies the second calculation, based on a cost-causation approach.

33. As a threshold matter, this Order leaves unaltered the section 1.1409(e)(2)(ii) 'cost-causation'-based calculation. That calculation still will be performed whenever the Commission's telecom rate rule is used, and even utility commenters concede that it does ''not do away with apportioning the costs among all attaching entities'' in accordance with section 224(e). The definition of cost for purposes of that provision excludes capital costs and was designed to yield a rate that approached the incremental cost of attachment.

34. The question of whether, and to what extent, to allow utilities to go beyond the recovery permitted by the section 1.1409(e)(2)(ii) telecom rate calculation and recover some capital costs ultimately depends on a further policy evaluation. As the Commission explained in 2011, and as the Commission reiterates above, its implementation of section 224 is guided in significant part by its mandate to encourage the deployment of broadband. That policy, if overriding other considerations, might counsel in favor of relying solely on the rate yielded by the 'cost-causation' calculation in section 1.1409(e)(2)(ii), rather than permitting higher rates as just and reasonable under section 224(e). But the Commission also sought—and continues to seek—to balance the ''legitimate concerns of pole owners and other parties'' by preserving incentives to invest in poles and avoiding the imposition of an undue burden on utility ratepayers.

35. As described above, in 2011 the Commission adopted rules that it anticipated would result in a telecom rate that generally approximated the cable rate. In practice, however, the rule the Commission adopted has only poorly reflected the balancing of policy interests that the Commission anticipated attaining in 2011 because the facts on the ground differed significantly from the Commission presumptions upon which the 2011 rule was predicated. As a result, telecom rates calculated based on the Commission's rules frequently were higher than the levels the Commission generally sought to achieve as just and reasonable under section 224(e)—*i.e.,* materially in excess of the cable rate. The reclassification of broadband Internet access service as a telecommunications service brings this shortcoming into greater focus. Adopting the changes to section 1.1409(e)(2)(i) proposed by Petitioners will bring the balance that the Commission anticipated achieving in 2011, which the Commission is likewise persuaded is the appropriate outcome today.

36. Thus, the Commission adopts the Petitioners' proposal and modifies section 1.1409(e)(2)(i) of the rules by redefining the ambiguous term ''cost'' as a percentage of fully allocated costs that depends on whether the average number of attaching entities in an area is 2, 3, 4, or 5. The specific percentage of fully allocated costs that Commission adopts in each of those instances will yield a rate under section 1.1409(e)(2)(i) that more closely and consistently approximates the cable rate.

37. Although this definition of cost is based on an integer average number of attachers in an area, consistent with the Commission's efforts to ensure that it implements section 224(e) in a ''readily administrable'' manner, the proposal the Commission adopts incorporates a mechanism to allow parties, should they so choose, to continue to rely on non-integer average numbers of attachers in a service area by interpolating from the specified cost allocators in section 1.1409(e)(2)(i) of the rules in a manner that does not undermine the definition of cost adopted above. In pertinent part, section 224(e)(2) is focused on allocating the ''cost''—however defined—of providing space on a pole other than useable space. Although a given pole only will have an integer number of attaching entities, for administrability the Commission has long permitted pole attachment rates to be calculated based on surveys or averages of the number of attaching entities in the relevant service area, which has the potential to yield an average number of attachers that is not an integer number. The use of a non-integer number of attaching entities in conjunction with the new definition of cost adopted for areas with 2, 3, 4, or 5 average attaching entities in revised section 1.1409(e)(2)(i) of the rules would result in similar, even if not always as extensive, deviations from the cable rate as the Commission found to result under the version of the rule adopted in 2011. The Commission concludes that such deviation is at odds with the balancing of policy interests it seeks to achieve through its revisions to section 1.1409(e)(2)(i) and also anticipates that it would increase the likelihood of disputes. The Commission thus adopts the interpolation mechanism in Petitioners' proposal, which will leave parties free to continue using non-integer average number of attachers should they choose to do so, without undermining its ability to ensure just and reasonable rates under section 224(e) in an administrable manner.

38. Insofar as the reclassification of broadband Internet access service results in most Commission-regulated attachments becoming subject to the telecom rate, that counsels in favor of its redefinition of cost, contrary to the claims of some commenters. The Commission recognizes that the *2011 Pole Attachment Order* cited the marketplace distortions resulting from disparate telecom and cable rates as part of the policy rationale for the telecom rate change adopted there. As identified there, these distortions led to

competitive disparities arising from telecommunications carriers paying higher pole attachment rates than their cable operator competitors. The distortions also created disincentives for cable operators to begin offering advanced services that could newly subject them to the telecom rate. Some commenters argue that reclassification of broadband Internet access service, insofar as it results in most cable operators now being subject to the telecom rate, resolves concerns about marketplace distortions and leaves the Commission with little or no policy basis for revisiting the definition of ''cost'' to better ensure that the telecom rate is as low and close to uniform with the cable rate as possible. The Commission rejects such claims for the reasons already explained above. In particular, the current telecom rate could lead to a windfall for utilities by increasing rates for many attachments without any offsetting benefits to cable attachers. This not only would harm cable operators and their customers, but more broadly would undermine the Commission's broadband policies by creating artificial marketplace distortions and disincentives for investment. Indeed, the Commission made this point clear in the *Open Internet Order* when it stated, ''[t]o the extent that there is a potential for an increase in pole attachment rates for cable operators that also provide broadband Internet access service, the Commission is highly concerned about its effect on the positive investment incentives that [otherwise] arise from new providers' access to pole infrastructure.''

39. The Commission also disagrees with the suggestions of some commenters that only certain types of policy considerations can form the basis for its interpretation and implementation of the ambiguous term ''cost'' in section 224(e). As the D.C. Circuit recognized in *AEP,* the Commission reasonably can rely on policy rationales in giving meaning to the term ''cost.'' The Commission explains above the specific policy rationales for the approach the Commission adopts here, and finds no basis to conclude that those considerations cannot form a sufficient justification for the interpretation of the term cost in its implementation of section 224(e). For example, certain commenters assert that there is no ''economic reason'' for the adopted approach to defining cost, but do not explain what they mean by an ''economic reason,'' or why the policy considerations discussed above, including the economic effects of alternative approaches to defining cost, would not fall within that scope. Some commenters also criticize the Petitioners' proposal for failing to provide a more favorable outcome for attachers in rural areas, but fail to explain why that is a necessary basis for interpreting the term ''cost.'' To the extent that those comments are premised on certain policy arguments relied upon by the Commission in 2011 as part of its explanation of the specific definitions of cost adopted there, the Commission finds them unpersuasive. The Commission finds for the reasons explained above that the version of section 1.1409(e)(2)(i) adopted in 2011 only poorly advanced the Commission's more fundamental policy objectives, and to better advance those fundamental policy objectives, and for the other policy reasons relied on in this *Order,* the Commission departs from its prior approach that relied on historical rules tied to urban/rural distinctions. Moreover, the Commission is not revisiting how cost is defined under section 1.1409(e)(2)(i) to more consistently and accurately yield a rate the same or very similar to the cable rate as an end unto itself, but because that reflects the Commission's intended policy balancing, and the Commission rejects suggestions that that is not a valid justification. More broadly, because the Commissions explain in detail the legal and policy basis for its adoption of Petitioners' proposed revision to section 1.1409(e)(2)(i) of the rules, it rejects general claims that adopting that proposal would be arbitrary and capricious.

40. Nor does modification of the telecom rate rule render section 224(e)(2) of the Act a nullity, as some allege. For one, the Commission's telecom rate rule requires a comparison of the output of two calculations, and as explained above, even utilities appear to concede that the cost-causation-based calculation in section 1.1409(e)(2)(ii) gives meaning to section 224(e)(2). Moreover, under revised section 1.1409(e)(2)(i) the apportionment specified in section 224(e)(2) is given meaning because it is only by applying that apportionment to the definition of ''cost'' adopted above that the resulting rate will closely approximate the cable rate, and thus be just and reasonable under the analysis above.

41. The Commission also rejects claims that its approach to interpreting ''cost'' otherwise is at odds with Congressional intent and the text and structure of section 224. The *2011 Pole Attachment Order* explained why the statute does not require the telecom rate necessarily to be higher than, or otherwise different from, the cable rate and the Commission finds nothing in the record here to undercut that analysis. The Commission acknowledges some commenters' arguments that section 224(e)(2) could be read to suggest that Congress envisioned the telecom rate varying with the number of attachers, in contrast to its revised approach to defining cost in section 1.1409(e)(2)(i) of the rules, under which the resulting rate will be the same or very similar regardless of the number of attaching entities. At the same time, although section 224(e)(2) provides for costs to be apportioned in a manner that depends on the number of attachers, it left undefined what costs should be so apportioned. This is in contrast to section 224(d)(1), which specifies both a cost-based rate methodology and the defined scope of costs to be used for purposes of the cable rate. In particular, although, as some commenters observe, Congress did not simply mandate the cable rate for all attachments, neither did it specify a definition of cost that would require an outcome under section 224(e)(2) that would, in practice, always vary with the number of attaching entities. Congress thus permitted the Commission to implement section 224(e) in a manner that yielded rates that vary with the number of attachers—an outcome that would depart from the cable rate, notwithstanding the requirement in section 224(e)(1) that the rate be not only just and reasonable but also ''nondiscriminatory.'' But while permitting such an outcome, the Commission also concludes that Congress did not require such an outcome as mandatory given its use of the ambiguous term ''cost.''

42. In implementing section 224(e), the Commission considers the broader purposes of section 224, as also informed by other statutory goals and mandates. As in the *2011 Pole Attachment Order,* the Commission finds that its interpretation and implementation of section 224(e) here advances those objectives. The Commission has concluded that ''[t]he purpose of Section 224 of the Communications Act is to ensure that the deployment of communications networks and the development of competition are not impeded by private ownership and control of the scarce infrastructure and rights-of-way that many communications providers must use in order to reach customers.'' This also is borne out by the text of section 224, which emphasizes that the Commission's fundamental role is to

ensure just and reasonable rates, terms, and conditions of access. Other statutory provisions likewise counsel in favor of such an understanding of section 224, as discussed in greater detail in the *2011 Pole Attachment Order* and above. For the reasons explained in the preceding discussion, the Commission concludes that the revised telecom rate rule it adopts is necessary to ensure just and reasonable rates for pole access as a backstop for when private negotiations fail. Because the Commission can achieve that outcome by how it defines ''cost'' under section 224(e), while still formally giving meaning to all the language of that provision, the Commission concludes that its adopted approach reasonably implements that provision as understood in the context of section 224 as a whole.

43. The Commission also is not persuaded by arguments that section 224(e)(2) limits the costs to be borne by pole owners. As described above, the Commission's fundamental responsibility under section 224(e) is to ensure that regulated rates ''for pole attachments used by telecommunications carriers to provide telecommunications services'' are just, reasonable, and nondiscriminatory. Read in that context, the Commission interprets section 224(e)(2) only to govern the apportionment of the ''cost''—however defined—of unusable space in the rates pole owners charge to telecom attachers. It is true that the methodology used to calculate the apportionment of ''cost'' to a telecom attacher under section 224(e)(2) involves a calculation of what ''all attaching entities'' would bear assuming hypothetically that they all bore an equal apportionment of such cost. But it does not actually govern the cost to be borne by entities other than telecom attachers—whether the pole owner or other attachers.

D. The Revisions to the Telecom Rate Rule Are Procedurally Proper

44. Adopting this change to section 1.1409(e)(2)(i) of the rules is procedurally proper. Following the Commission's 2010 *Further Notice* seeking comment on ''establish[ing] rental rates for pole attachments that are as low and close to uniform as possible, consistent with section 224 of the Act,'' the *2011 Pole Attachment Order* revised the telecom rate rule in a manner that the Commission anticipated would reflect its balancing of policy concerns. The timely filed Petition for Reconsideration identified flaws in the Commission's factual assumptions underlying section 1.1409(e)(2)(i) of the rules as adopted in the *2011 Pole Attachment Order* that would cause that rule, in practice, to only poorly reflect the Commission's intended balancing of policy objectives. The Petitioners thus proposed that the Commission, on reconsideration, revise that rule in a manner that ''increases the certainty that pole rates will be as close as possible to the cable rate, meets the Commission's intended purposes, and makes the calculation more readily administrable by eliminating the need to distinguish urbanized and non-urbanized areas.'' Given that clear nexus to the *2011 Pole Attachment Order,* the Commission finds the request in the Petition for Reconsideration to be squarely within the scope of the order from which reconsideration is sought, and the Commission rejects arguments to the contrary. Furthermore, for the reasons discussed in the preceding section, the Commission finds merit in the Petitioners' arguments, and thus concludes that it is in the public interest not only to consider their Petition but also to grant their requested reconsideration.

45. The Commission also rejects claims that additional notice and comment is needed before it can proceed under the theory that the action in this Order effectively would modify sections 1.1417(c) and (d) of the rules. Section 1.1417(c) specifies the Commission's rebuttable presumptions of 5 attaching entities in urbanized areas and 3 attaching entities in non-urbanized areas. Section 1.1417(d) describes how a utility can instead establish its own presumptive average number of attaching entities, subject to rebuttal. As a threshold matter, the Commission is not persuaded by commenters' claims that the Petitioners' proposed revision to section 1.1409(e)(2)(i) would render those rules ''moot.'' Under the utilities' own theory, the Commission-specified presumptions in section 1.1417(c) would have increased, rather than diminished, significance when performing the section 1.1409(e)(2)(i) calculation because it would obviate the need for utilities to expend the effort to develop their own presumptive average numbers of attachers if they believe that variation in the number of attachers would not matter. Further, although the result of the calculation in section 1.1409(e)(2)(i) frequently will be higher than that yielded by the cost-causation-based calculation in section 1.1409(e)(2)(ii), its rules provide for both to be performed, with the possibility that there will be cases where the section 1.1409(e)(2)(ii) calculation is controlling. The outcome under section 1.1409(e)(2)(ii) unquestionably does vary with the number of attaching entities, and thus the utilities' ability to develop their own presumptive number of attaching entities under section 1.1417(d) remains important where the cost-causation-based calculation would be, or could be, controlling.

46. Although the Commission is not persuaded that any implications of its change to section 1.1409(e)(2)(i) of the rules for sections 1.1417(c) and (d) constitute substantive rule changes, even assuming *arguendo* that they were viewed in that manner, the Commission finds there was adequate notice and opportunity to comment. As noted above, the Commission's 2010 *Further Notice* sought comment on ''establish[ing] rental rates for pole attachments that are as low and close to uniform as possible, consistent with section 224 of the Act,'' seeking comment on particular alternative approaches and variations that might be adopted consistent with the Commission's statutory responsibilities. For example, the *Further Notice* included requests for comment on a proposal to revise the telecom rate rule so that it was the higher of a rate equal to the cable rate or a cost-causation-based rate, including regarding the administrability of such an approach and how it would relate to other Commission policies. Flowing from that *Further Notice,* the *2011 Pole Attachment Order* adopted revisions to the telecom rate rule, and the Petition for Reconsideration requested reconsideration of the resulting rule in various respects, all within the scope of the underlying *Order.* The Commission sought comment on the Petition for Reconsideration at the time it was filed, and provided a further opportunity to comment on the requested rule changes subsequent to the *Open Internet Order.* The Commission concludes that any implications for the continuing significance of section 1.1417(c) and (d) resulting from its adoption of the Petitioners' proposal should have been understood to be within the scope of issues subject to comment—indeed, commenters themselves appear to suggest that the implications for section 1.1417(c) and (d) are a necessary and unavoidable consequence of the adoption of that proposal. As a result, the Commission concluded that even assuming *arguendo* that notice and comment were required regarding the effects of a change in section 1.1409(e)(2)(i) on the presumption rules in section 1.1417(c) and (d), that was satisfied here.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

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

B. Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission includes in Appendix B a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this *Order on Reconsideration.*

C. Congressional Review Act

49. The Commission will send a copy of the *Order on Reconsideration,* including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1).

D. Final Regulatory Flexibility Analysis

50. As required by the Regulatory Flexibility Act of 1980, as amended (RFA).

51. An Initial Regulatory Flexibility Analysis (IRFA) was included in the *Order and Further Notice* in WC Docket No. 07–245 and GN Docket No. 09–51. The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

52. In this *Order on Reconsideration,* the Commission further implements its policy of bringing parity to pole attachment rates at or near the 47 CFR 1.1409(e)(1) cable rate formula level, including rates that are calculated using the 47 CFR 1.1409(d)(2) telecom rate formula. The *2011 Pole Attachment Order* adopted cost allocators in the telecom rate formula that were intended to closely approximate the treatment of cost in the cable rate formula. However, these allocators perform successfully only where poles have 5 attaching entities (0.66 percent of cost) or 3 attaching entities (0.44 percent of cost). To build on that limited success, the Commission now adds cost allocators for poles with 2 attaching entities (0.31 percent of costs) and 4 attaching entities (0.56 percent of cost). When the average number of attaching entities is a fraction, the applicable cost allocator will be interpolated from the two closest whole numbers. In this way, this *Order on Reconsideration* spares cable operators that also provide a telecommunications service (*e.g.,* broadband Internet access service) from having to pay attachment rates that would be approximately 70 percent higher than the rate they pay under the existing rules. Pole attachment rate parity at the cable rate level also harmonizes regulatory treatment between Commission-regulated states and states that set their own pole attachment rates, which prevents any deterrence to investment in Commission-regulated states. By keeping pole attachment rates unified and low, the Commission furthers its overarching goal to accelerate deployment of broadband by removing barriers to infrastructure investment.

F. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA and Summary of the Assessment of the Agency of Such Issues

53. No comments relating to any of the IRFAs have been filed since the *2011 Pole Attachment Order.* In making the determinations reflected in the *Order on Reconsideration,* the Commission has considered the impact of its actions on small entities.

G. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

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

55. *Small Businesses.* As of 2011, there are a total of approximately 28.2 million small businesses, according to the SBA.

56. *Small Organizations.* As of 2007, there are approximately 1.6 million small organizations. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

57. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 89,327 entities were ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

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

59. *Incumbent Local Exchange Carriers (''ILECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its proposed action.

60. Competitive Local Exchange Carriers (''CLECs''), Competitive Access Providers (''CAPs''), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard

specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers.'' Of the 89, all have 1,500 or fewer 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 its proposed action.

61. *Interexchange Carriers (''IXCs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by its proposed action.

62. *Wireless Telecommunications Carriers (except satellite).* This industry comprises 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. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except satellite). For that category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1368 firms had employment of fewer than 1000 employees. The Census data about firms employing more than 1000 employees does not identify the number of firms that employed 1500 employees or less. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by rules proposed in the Notice.

63. *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. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

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

65. *Broadband Personal Communications Service.* The broadband personal communications services (''PCS'') spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, 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 qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

66. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

67. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder

with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

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

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

70. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

71. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

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

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

74. 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, the Commission estimates 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.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

75. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

76. *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 fewer than 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.

77. *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. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

78. *Open Video Systems.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of cable firms can be considered small. In addition, the Commission notes that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some

of the OVS operators may qualify as small entities.

79. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

80. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

81. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*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. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities.

82. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' This category includes Electric Power Distribution, Hydroelectric Power Generation, Fossil Fuel Power Generation, Nuclear Electric Power Generation, and Other Electric Power Generation. The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

83. *Natural Gas Distribution.* This economic census category comprises: ''(1) establishments primarily engaged in operating gas distribution systems (*e.g.,* mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.'' The SBA has developed a small business size standard for this industry, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2002, there were 468 firms in this category that operated for the entire year. Of this total, 424 firms had employment of fewer than 500 employees, and 18 firms had employment of 500 to 999 employees. Thus, the majority of firms in this category can be considered small.

84. *Water Supply and Irrigation Systems.* This economic census category ''comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems.'' The SBA has developed a small business size standard for this industry, which is: all such firms having $6.5 million or less in Annual receipts. According to Census Bureau data for 2002, there were 3,830 firms in this category that operated for the entire year. Of this total, 3,757 firms had annual sales of less than $5 million, and 37 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

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

85. The new rule concerns a cost allocation method that parties use in a formula when negotiating just and reasonable pole attachment rental rates. Application of the cost allocation rule is expanded but not altered from the cost

allocation rule that parties currently use. The Commission expects the cost of complying with the revised cost allocation rule to be minimal, and compliance costs do not significantly differ from requirements in place before the adoption of this *Order on Reconsideration.*

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

86. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. Cost allocation methodologies used in pole attachment rate formulas are by nature the same for all entities that use them, regardless of size. No party suggested that the Commission develop alternative approaches to cost allocation based on entity size.

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

87. None.

V. Ordering Clauses

88. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 201(b), 224, 251(b)(4), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201(b), 224, 251(b)(4), 303(r), this *Order on Reconsideration* IS ADOPTED.

89. *It is further ordered,* pursuant to sections 1, 4(i), 4(j), 201(b), 224, and 303(r), of the Communications Act, as amended, as amended, 47 U.S.C. 151, 154(i), 154(j), 201(b), 224, 303(r), that the *Petition for Reconsideration* or Clarification filed by the National Cable and Telecommunications Association, COMPTEL, and tw telecom inc., is GRANTED to the extent indicated herein, and otherwise is DISMISSED.

90. *It is further ordered* that Part 1 of the Commission's rules IS AMENDED as set forth in Appendix A.

91. *it is further ordered* that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this *Order on Reconsideration shall be effective* 30 days after publication of a summary in the **Federal Register**.

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 Subpart J as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

Subpart J—Pole Attachment Complaint Procedures

■ 2. Section 1.1409 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(e) * * *

(2) * * *

(i) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph 1.1409(e)(2)(ii) of this section:

Rate = Space Factor × Cost

Where Cost

in Service Areas where the number of Attaching Entities is 5 = 0.66 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 4 = 0.56 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 3 = 0.44 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 2 = 0.31 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is not a whole number = N × (Net Cost of a Bare Pole × Carrying Charge Rate), where N is interpolated from the cost allocator associated with the nearest whole numbers above and below the number of Attaching Entities.

$$\text{Where Space Factor} = \left[\frac{\begin{pmatrix}\text{Space}\\ \text{Occupied}\end{pmatrix} + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$$

* * * * *

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