

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information or data you used that support your views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives.
6. Make sure to submit your comments by the comment period deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

#### 7. Submitting Confidential Business Information (CBI)

Do not submit information you are claiming as CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part of the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Dated: May 6, 2010.

**Brian J. McLean,**

*Director, Office of Atmospheric Programs.*

[FR Doc. 2010-11430 Filed 5-12-10; 8:45 am]

**BILLING CODE 6560-50-P**

### FEDERAL MARITIME COMMISSION

#### 46 CFR Parts 520 and 532

[Docket No. 10-03]

#### NVOCC Negotiated Rate Arrangements; Notice of Public Meeting

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Commission has determined to hold a public meeting on May 24, 2010 to receive oral comments concerning the Notice of Proposed Rulemaking published May 7, 2010 (75 FR 25150) regarding NVOCC Negotiated Rate Arrangements.

**DATES:** Requests to participate in the Public Meeting are due by May 14, 2010.

**ADDRESSES:** Address all requests to appear to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: [secretary@fmc.gov](mailto:secretary@fmc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: [secretary@fmc.gov](mailto:secretary@fmc.gov).

**SUPPLEMENTARY INFORMATION:** On April 29, 2010, the Federal Maritime Commission issued a Notice of Proposed Rulemaking ("NPRM") proposing a new part 532, providing an exemption for non-vessel-operating common carriers ("NVOCCs") agreeing to negotiated rate arrangements from certain provisions and requirements of the Shipping Act of 1984 and certain provisions and requirements of the Commission's regulations. The NPRM also announced that the Commission would hold a public meeting if any member of the public made a request to make oral comments. Such a request has been received and the Commission has determined to convene this public meeting on May 24, 2010. The meeting will be held in the Commission's Main Hearing Room, Room 100, 800 North Capitol Street, NW., Washington, DC.

Requests to appear at the meeting must be filed with the Office of the Secretary no later than 5 p.m. on May 14, 2010, and include the name, street address, e-mail address, telephone number, and the name of your company or employer, if any. Parties wishing to participate should also provide a brief statement describing the nature of their business, e.g., Federal government agencies, OTIs, associations, consultants, tariff publisher and vessel-operating common carriers.

Requests to appear should be addressed to the Office of the Secretary and submitted: By e-mail as an attachment (Microsoft Word) sent to [secretary@fmc.gov](mailto:secretary@fmc.gov); by facsimile to 202-523-0014; or by U.S. mail or courier to Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573. Please note, to avoid delay, e-mail or facsimile submissions are encouraged. The Commission will announce the time of the meeting, the order of presentation, and time allotment prior to the May 24, 2010 meeting.

By the Commission.

**Karen V. Gregory,**  
*Secretary.*

[FR Doc. 2010-11425 Filed 5-12-10; 8:45 am]

**BILLING CODE 6730-01-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 54

[WC Docket No. 10-90; GN Docket No. 09-51, WC Docket No. 05-337; FCC 10-58]

#### Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission (Commission) delivered to Congress a National Broadband Plan recommending that the Commission adopt cost-cutting measures for existing voice support and create a Connect America Fund, without increasing the overall size of the Fund, to support the provision of broadband communications in areas that would be unserved without such support or that depend on universal service support for the maintenance of existing broadband service. This document and the companion Notice of Inquiry is the first in a series of proceedings to implement that vision. This proceeding will develop the detailed analytic foundation necessary for the Commission to distribute funds in an efficient, targeted manner that avoids waste and minimizes burdens on American consumers. This document seeks comment on specific common-sense reforms to cap growth and cut inefficient funding in the legacy high-cost support mechanisms and to shift the savings toward broadband communications.

**DATES:** Comments on the proposed rules are due on or before July 12, 2010, and reply comments are due on or before August 11, 2010.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, by any of the following methods:

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

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

- *People with Disabilities:* Contact the FCC to request reasonable

accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

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

**FOR FURTHER INFORMATION CONTACT:** Katie King, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7491 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337; FCC 10-58, adopted April 21, 2010, and released April 21, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial

overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

*In addition, one copy of each pleading must be sent to each of the following:*

- The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554; Web site: <http://www.bcpweb.com>; phone: 1-800-378-3160; and

- Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554; e-mail: [Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov).

**People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [fcc504@fcc.gov](mailto:fcc504@fcc.gov); phone: (202) 418-0530 or (202) 418-0432 (TTY).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its Web site: <http://www.bcpweb.com>, by e-mail at [fcc@bcpweb.com](mailto:fcc@bcpweb.com), by

telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (TTY), or by facsimile at (202) 488-5563.

## I. Notice of Proposed Rulemaking

### 1. Controlling the Size of the High-Cost Program

1. As an essential first step toward repurposing the universal service fund to support broadband as well as voice service, we must ensure that the size of the fund remains reasonable. The National Broadband Plan recommends that the Commission take steps to manage the universal service fund so that its total size remains close to its current level (in 2010 dollars) to minimize the burden of increasing universal service contributions on consumers. The Commission already has taken action to control the overall size of the high-cost fund. In 2008, the Commission adopted on an interim basis an overall competitive eligible telecommunications carrier (ETC) high-cost cap of approximately \$1.4 billion, pending comprehensive USF reform. Similarly, today we seek comment on capping legacy high-cost support provided to incumbent telephone companies at 2010 levels, which would have the effect of creating an overall ceiling for the legacy high-cost program. Such a cap would remain in place while the Commission determines how to distribute funds in a more efficient, targeted manner to those areas of the country where no firm can operate profitably without government support, while minimizing burdens on American consumers who ultimately pay for universal service through carrier pass-through charges.

2. We seek comment on how the Commission could implement such a cap. Alternatively, we invite other proposals that would ensure that the overall size of the high-cost fund stays at or below current levels. Should the Commission impose an overall cap on legacy high-cost support for incumbent LECs at 2010 levels? Should the Commission impose a cap on each individual high-cost mechanism (to the extent each is not already capped) at 2010 levels? Should the Commission freeze per-line support for each carrier at 2010 levels? For example, the Alliance for Rural CMRS Carriers proposed that incumbent LEC support amounts per line be capped at either March 2008 or March 2010 levels. We seek comment on this proposal. Alternatively, should the Commission freeze the total amount of support a carrier receives in a particular study area at 2010 levels? Are there other

ways to implement such a cap? What rule changes would be required to implement this proposal? How would the Commission implement this proposal in conjunction with the reforms identified in the following paragraphs? In addition, what implications would this proposal have for other Commission rules, as such the Commission's current pricing rules, and should the implementation of this proposal be coordinated with any other regulatory actions?

## *2. Specific Steps To Cut Legacy High-Cost Support*

3. As discussed in more detail below, the National Broadband Plan identifies several specific first steps that could reduce funding in the legacy high-cost support mechanisms and recommends that those savings be used to further the goals of universalizing broadband without increasing the overall size of the universal service fund. The National Broadband Plan recognizes that shifting funds could have transitional impacts and recommends that "[a]s the FCC considers this policy shift, it should take into account the impact of potential changes in free cash flows on providers' ability to continue to provide voice service and on future broadband network deployment strategies." Below, we seek comment on the first steps set forth in the National Broadband Plan. To the extent that any commenter believes that these proposals, or the proposal to cap legacy high-cost support, would negatively affect affordable voice service for consumers today, we would encourage such a commenter to identify all assumptions and to provide data, including information on network investment plans over the next five years and free cash flows, to support that position. The intent of these proposals is to eliminate the indirect funding of broadband-capable networks today through our legacy high-cost programs, which is occurring without transparency or accountability for the use of funds to extend broadband service. We seek comment on the timing of implementing such reforms in conjunction with the creation of a more efficient and targeted framework that will provide support for broadband and voice. We encourage commenters to address when each rule change should be implemented and how specific reforms should be sequenced to provide regulatory clarity for ongoing private sector investment.

4. In addition, we seek comment on the relationship between such universal service reforms and carriers' rates, including intercarrier compensation rates, under the Commission's current

pricing rules. We seek comment both on the likely rate impacts under existing pricing rules that would arise from the possible universal service reforms and any appropriate responses. We also note that many rural rate-of-return carriers participate in the National Exchange Carrier Association (NECA) pooling process for their interstate access charges. If universal service support under the legacy programs were frozen for such carriers, are there special considerations resulting from operation of the NECA pool that would unfairly advantage or disadvantage certain carriers? The Commission previously has expressed concern about the risks of continued participation in NECA pools by carriers that were subject to incentive regulation. We seek comment on whether such concerns would remain if all rate-of-return carriers converted to incentive regulation. Would the pool be able to continue to operate pursuant to regulation other than rate-of-return?

5. *Shifting Rate-of-Return Carriers to Incentive Regulation.* The National Broadband Plan recommends that the Commission "require rate-of-return carriers to move to incentive regulation." We seek comment on requiring current rate-of-return companies to convert to some form of incentive regulation. We note that a number of companies have voluntarily converted to price cap regulation in the last two years. In such cases, the Commission effectively converted the companies' interstate common line support (ICLS) to a frozen amount per line. We seek comment on whether the Commission should replace rate-of-return regulation with the price-cap framework recently adopted for voluntary conversions, an alternative price-cap framework, or some other form of incentive regulation. We seek comment on the costs and the benefits that would be realized by converting all rate-of-return carriers to price cap regulation or other incentive regulation. We seek comment on whether, in an increasingly competitive marketplace, and with carriers' service offerings expanding beyond regulated services, the current rate-of-return framework, which considers only regulated costs and revenues, has become less appropriate.

6. We seek comment on whether we should convert ICLS to a frozen amount per line, which would have the effect of limiting growth in the legacy high-cost program. We seek comment on whether this reform should be implemented at the same time as any measures the Commission may adopt to provide targeted funding for the deployment of broadband-capable infrastructure to

areas that are unserved, or should such a rule change occur before the development of the CAF, or otherwise be coordinated with some other regulatory action such as conversion to incentive regulation. The National Broadband Plan recognizes that the savings realized by eliminating future growth in the legacy ICLS program represent funding that could be redirected toward achieving broadband-related goals. We seek comment on this proposal.

7. *Elimination of Interstate Access Support.* The National Broadband Plan also recommends that the Commission "redirect access replacement funding known as Interstate Access Support (IAS) toward broadband deployment." Thus, we now seek comment on the elimination of IAS. When the Commission created IAS in 2000, it said that it would revisit this funding mechanism "to ensure that such funding is sufficient, yet not excessive." That re-examination has not occurred.

8. Specifically, we now seek comment on eliminating §§ 54.800–54.809 of our rules and transferring any IAS funding levels as of the date of elimination to the new Connect America Fund to provide support for broadband-capable networks. We invite commenters to propose an appropriate timeline for the elimination of these rules and any glide-path that may be necessary to ensure that recipients continue to be able to provide voice services during the transition.

9. *Sprint and Verizon Wireless Voluntary Commitments.* The National Broadband Plan also recommends that the Commission "issue an order to implement the voluntary commitments of Sprint and Verizon Wireless to reduce the High-Cost funding they receive as competitive ETCs to zero over a five-year period as a condition of earlier merger decisions." The Commission will consider shortly an order clarifying how to implement Verizon Wireless's and Sprint's voluntary commitments.

10. *Elimination of Competitive ETC High-Cost Support.* The National Broadband Plan recommends that the Commission phase out remaining competitive ETC funding under the existing funding mechanisms over a five-year period and target the savings toward the deployment of broadband-capable networks and other reforms in the plan. We seek comment on this proposal.

11. We seek comment on whether we should ramp down competitive ETC support under the legacy programs, and if so, how the transition should occur. For example, should the Commission

reduce support on a pro rata basis (e.g., 20% reduction each year) for each state? Should the Commission reduce support at an accelerated rate of decline? Should the Commission reduce support on a proportional basis for all states, or in some other manner, and if so, on what basis? Would there be any impact on existing subscribers of competitive ETCs if the Commission were to reduce competitive ETC support under the legacy funding mechanisms? How should reductions in legacy high-cost support for all competitive ETCs be coordinated with implementation of Verizon Wireless's and Sprint's voluntary commitments to phase-out legacy high-cost support over a five-year period?

12. *General Proposals.* Commenters are invited to submit other proposals to eliminate or reduce funding levels in the legacy high-cost support mechanisms to transition to efficient funding levels in the Connect America Fund. We encourage parties that submit alternative proposals to identify specific rule changes and quantify the impact of such changes.

## II. Procedural Matters

### A. Initial Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act ("RFA"), the Commission prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

14. On March 16, 2010, the Commission released a Joint Statement on Broadband stating that "[t]he nearly \$9 billion Universal Service Fund (USF) and the intercarrier compensation (ICC) system should be comprehensively reformed to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs." On the same day, the Commission delivered to Congress a

National Broadband Plan recommending that the Commission adopt cost-cutting measures for existing voice support and create a Connect America Fund (CAF), without increasing the overall size of the Fund, to support the provision of broadband communications in areas that would be unserved without such support or that depend on universal service support for the maintenance of existing broadband service.

15. The National Broadband Plan recommends that the Commission take steps to manage the universal service fund so that its total size remains close to its current level (in 2010 dollars) to minimize the burden of increasing universal service contributions on consumers. The NPRM seeks comment on specific common-sense reforms to contain growth in the legacy high-cost support mechanisms and identify savings that can be shifted toward broadband. Specifically, the NPRM seeks comment on capping legacy high-cost support provided to incumbent telephone companies at 2010 levels; shifting rate-of-return carriers to incentive regulation and converting interstate common line support to a frozen amount per line; eliminating interstate access support; and eliminating high-cost support for competitive eligible telecommunications carriers.

#### 2. Legal Basis

16. This legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 214, 254, and 403, and § 1.411 of the Commission's rules, 47 CFR 1.411.

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

17. 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.

18. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

19. *Small Organizations.* Nationwide, as of 2002, 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."

20. *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 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

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

22. *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 our proposed action.

23. *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, 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1,005 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 our proposed action.

24. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

25. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll

resellers are small entities that may be affected by our proposed action.

26. *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 our proposed action.

27. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.

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

29. The second category of All Other Telecommunications comprises, *inter alia*, "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to,

and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

30. *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, we 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, we estimate that the majority of wireless firms are small.

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

32. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. One

license was awarded. The winning bidder was not a small entity.

33. *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, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

34. *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 reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

35. 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.

36. *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.

37. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling

principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

38. In 2007, the Commission adopted the *700 MHz Second Report and Order*. The Order revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090

licenses won. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks.

However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

39. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (“MEA”) licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

40. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second

auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

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

42. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

43. *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.

44. *Private Land Mobile Radio (“PLMR”).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as

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

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

46. *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. We note, however, that the common carrier microwave fixed licensee category includes some large entities.



47. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for “very small business” is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173, 39 GHz licenses, began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

48. *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.

49. *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, we 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.

50. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in 2007. In that auction, the Commission defined “small

business” as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed \$15 million but do not exceed \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. Neither of the two winning bidders sought designated entity status.

51. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons. The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

52. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding \$15 million. “Very small business” in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

53. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the

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

54. In addition, the SBA’s Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable



Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." 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 we 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.

55. *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 we 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.

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

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

58. *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 we 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, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

59. *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 we 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.

60. *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.

61. *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, we estimate that the majority of ISP firms are small entities.

62. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

63. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA.

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

64. As discussed above, the NPRM seeks comment on a number of specific reforms to contain the growth in the legacy high-cost support mechanisms and identify savings that can be shifted toward broadband. Under the Commission's current rules, eligible telecommunications carriers (ETCs) file certain information with the Commission, the Universal Service Administrative Company (USAC), and/or the National Carrier Exchange Association (NECA) that is used to determine the amount of high-cost support each ETC receives. The proposals in the NPRM to cap or eliminate support, if eventually adopted, are not likely to substantially change the current reporting, recordkeeping, and compliance requirements, and would, in some cases, reduce such burdens. The proposal to shift rate-of-return carriers to incentive regulation likely would result in certain one-time reporting requirements related to the conversion, such as establishing initial price cap indexes for price cap baskets. In addition, some ongoing reporting, recordkeeping and other compliance requirements may change after the conversion from rate-of-return regulation, but may result in less burdensome requirements, in some cases. We do not have an estimate of potential reporting, recordkeeping, and compliance burdens, because it is too speculative at this time to anticipate the number of carriers that would be required to convert to incentive regulation, or what type of incentive regulation would be required. We anticipate that commenters will provide the Commission with reliable information on any costs and burdens on small entities.

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

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

66. As discussed above, the NPRM seeks comment on capping legacy high-cost support provided to incumbent telephone companies; shifting rate-of-return carriers to incentive regulation and converting interstate common line support to a frozen amount per line; eliminating interstate access support; and eliminating high-cost support for competitive eligible telecommunications carriers. The NPRM seeks comment generally on the proposed universal service reforms and carriers' rates under the Commission's current pricing rules, and specifically seeks comment on whether there are special considerations resulting from the operation of the NECA pool that would unfairly advantage or disadvantage certain carriers. The NPRM also seeks comment on the costs and benefits that would be realized by converting all rate-of-return carriers to price cap or other incentive regulation. We anticipate that the record will reflect whether the overall benefits of such a requirement would outweigh the burdens on small entities, and if so, suggest alternative ways in which the Commission could lessen the overall burdens on small entities. We encourage small entity comment.

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

67. None.

#### B. Paperwork Reduction Act Analysis

68. This document discusses potential new or revised information collection requirements. The reporting requirements, if any, that might be adopted pursuant to this NPRM are too speculative at this time to request comment from the OMB or interested parties under section 3507(d) of the Paperwork Reduction Act. Therefore, if

the Commission determines that reporting is required, it will seek comment from the OMB and interested parties prior to any such requirements taking effect. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we will seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection.

### C. Ex Parte Presentations

69. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission’s rules.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2010-11321 Filed 5-12-10; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 24

[FAR Case 2009-004; Docket 2010-0089, Sequence 1]

RIN 9000-AL59

### Federal Acquisition Regulation: FAR Case 2009-004, Enhancing Contract Transparency

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

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

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council (Councils) are seeking information that will assist in determining how best to amend the Federal Acquisition Regulation (FAR) to enable public posting of contract actions, should such posting become a requirement in the future, without compromising contractors’ proprietary and confidential commercial or financial information. This transparency effort is intended to promote efficiency in Government contracting through an open acquisition process and improve Federal spending accountability consistent with the Administration’s memorandum entitled *Transparency and Open Government* (January 21, 2009) (Published in the **Federal Register** at 74 FR 4685, January 26, 2009).

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at the address shown below on or before July 12, 2010 to be considered in the formation of a proposed rule.

**ADDRESSES:** Submit comments identified by FAR Case 2009-004, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009-004” under the heading “Comment or Submission.” Select the link “Send a Comment or Submission” that corresponds with FAR Case 2009-004. Follow the instructions provided to complete the “Public Comment and Submission Form.” Please include your name, company name (if any), and “FAR Case 2009-004” on your attached document.

- *Fax:* 202-501-4067.
- *Mail:* General Services Administration, FAR Secretariat (MVCB), 1800 F Street, NW., Room 4041, Attn: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR Case 2009-004 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Jackson, Procurement Analyst, at (202) 208-4949 for clarification of content. The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. Please cite FAR case 2009-004.

#### SUPPLEMENTARY INFORMATION:

The Councils anticipate that, in the future, a requirement to post on-line the text of contracts and task and delivery orders will be instituted. See generally

Presidential Memorandum entitled *Freedom of Information Act* (January 21, 2009) (Published in the **Federal Register** at 74 FR 4683, January 26, 2009); Presidential Memorandum entitled *Transparency and Open Government* (January 21, 2009) (Published in the **Federal Register** at 74 FR 4685, January 26, 2009); Attorney General Memorandum entitled *Freedom of Information Act* (March 19, 2009); Office of Science and Technology Policy Notice, *Transparency and Open Government* (Published in the **Federal Register** at 74 FR 23901, May 21, 2009); OMB memorandum entitled *Open Government Directive* (M-10-06, December 8, 2009). In support of this anticipated requirement, the Councils are considering how best to revise the FAR to facilitate such posting without violating statutory and regulatory prohibitions against disclosing protected information belonging to the Government or contractors.

The Councils are particularly interested in suggestions that will facilitate uniform, consistent processing methods that are fair and equitable as well as cost effective and efficient, while at the same time simplifying access to acquisitions once posted. The Councils are mindful of the need to protect the Government’s classified information in accordance with the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M) and the Industrial Security Regulation (DoD 5220.22-R) (*see* FAR Subpart 4.4) and the protections afforded contractor information under the Freedom of Information Act (FOIA) (5 U.S.C. 552) procedures (*see* FAR Subpart 24.2 and E.O. 12600). The Councils are also mindful of the FAR section which already addresses the marking of contractor information (*see* FAR 3.104-4).

It may not be practical to apply FOIA procedures before posting in every case. The Councils are looking into methods for identifying the types of information that should not be posted or released to the public, as well as means for electronic processing and posting, and development of provision or clause requirements for successful offerors to provide a redacted copy of the contract. The Councils are also requesting suggestions for how best to protect the types of information through redacting, locating all such information in a standard place in the contract, or other possible methods to be considered.

Respondents are encouraged to address the benefits of this transparency effort as well as possible impacts on offerors’ and the Government’s business systems, dollar thresholds for