Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner O'Rielly issuing a separate statement; Commissioners Rosenworcel and Starks dissenting and issuing separate statements.

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I. INTRODUCTION

1. Today, we begin a proceeding to seek comment on establishing a cap on the Universal Service Fund (USF or Fund) and ways it could enable the Commission to evaluate the financial aspects of the four USF programs in a more holistic way, and thereby better achieve the overarching universal service principles Congress directed the Commission to preserve and advance. While each of the constituent USF programs are capped or operating under a targeted budget, the Commission has not examined the programs holistically to determine the most efficient and responsible use of these federal funds. A cap could promote meaningful consideration of spending decisions by the Commission, limit the contribution burden borne by ratepayers, provide regulatory and financial certainty, and promote efficiency, fairness, accountability, and sustainability of the USF programs.

2. The Communications Act of 1934 first established the concept of universal service, and the Telecommunications Act of 1996 formalized and expanded universal service, paving the way for the programs that exist today.[1] The Fund provides financial support to recipients through four major programs: the High-Cost program (also known as the Connect America Fund), the Lifeline program, the schools and libraries program, also known as E-Rate, and the Rural Health Care program. Financial contributions to the Fund are required to be made by providers of telecommunications and

[1] 47 U.S.C. §§ 214(e); 254.

telecommunications services, who are assessed charges based on their interstate and international revenues. Consumers ultimately pay these charges, however, either through higher prices or line-item charges on their bills.

3. We initiate this proceeding mindful of our obligation to safeguard the USF funds ultimately paid by ratepayers, and to ensure the funds are spent prudently and in a consistent manner across all programs. Although the creation of a topline budget will not eliminate the Commission's ability to increase funding for a particular program, a cap would require us to expressly consider the consequences and tradeoffs of spending decisions for the overall fund, and more carefully evaluate how to efficiently and responsibly use USF financial resources. We take this action to preserve and advance universal service, to increase access to telecommunications services for all consumers at just, reasonable, and affordable rates, to meet our obligation to protect against Fund waste, and to ensure that the universal service programs are funded appropriately.

II. BACKGROUND

4. Section 254(b) of the Act directs the Commission to base policies for the preservation and advancement of universal service on a number of principles.[2] Our statutory obligation requires that the Commission's policies result in equitable and nondiscriminatory contributions to the Fund, as well as specific and predictable support programs.[3] In order to fulfill Congress' directive, the Commission must balance the need for fiscal responsibility and predictability with the benefits that comes from universal service funding.[4] However, as courts and the Commission have recognized, too much subsidization could negatively affect the affordability of telecommunications services for those consumers who ultimately provide the support for universal service.[5] Although the Commission has taken steps over the last decade to set caps or funding targets for each of the four programs individually, for the first time we look at the Fund and its programs holistically.

5. *High-Cost*. The high-cost program, also known as the Connect America Fund (CAF), provides support for the deployment of broadband-capable networks in rural areas. The Connect America Fund helps make broadband, both fixed and mobile, available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise have broadband. The *USF/ICC Transformation Order*, adopted in 2011, comprehensively reformed and modernized the high-cost program and established, for the first time, a budget mechanism for the various CAF programs. For years 2012-2017, the budget was set at no more than \$4.5 billion per year, with an automatic review trigger if the budget was threatened to be exceeded.[6] The Commission did not include an inflationary adjustment in the \$4.5 billion budget adopted in 2011. The Commission in 2011 also directed the Fund administrator, the Universal Service Administrative Company (USAC) to collect \$1.125 billion per quarter for high-cost

[2] 47 U.S.C. § 254(b).

[3] 47 U.S.C. § 254(b)(4)-(5).

[4] *Id*.

[5] *See, e.g.*, Qwest Corporation v. FCC, 258 F.3d 1191, 1200 (5th Cir. 2001); Alenco Communications, Inc. v. FCC, 201 F.3d 608, 620 (5th Cir. 2000); Qwest Commc'ns Int'l Inc. v. FCC, 398 F.3d 1222, 1234 (10th Cir. 2005); USF/ICC Transformation Order, 26 FCC Rcd at 17710, para. 124.

[6] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17668, para. 5 (2011) (*USF/ICC Transformation Order and/or FNPRM*); *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*In re: FCC 11-161*).

funding, regardless of the projected quarterly demand, to avoid dramatic shifts in the contribution factor while the Connect America Fund was implemented.[7] Any excess money collected is kept in reserve for CAF initiatives.[8] The Connect America Fund, which has a number of constituent programs, focused on supporting different technologies and recipients with different funding amounts, disbursed $4.692 billion in 2017, of which approximately $480 million came from the CAF reserves.[9]

6. *Schools and Libraries*. The schools and libraries universal service support mechanism, otherwise known as the E-Rate program, provides discounts to schools and libraries to ensure affordable access to high-speed broadband and telecommunications necessary for digital learning. Originally capped at its inception at $2.25 billion in disbursements per funding year, the Commission began indexing the funding cap to inflation in 2010 to ensure that E-Rate program funding keeps pace with the changing broadband and telecommunications needs of schools and libraries.[10] The Commission then increased the cap in funding year 2015 by $1.5 billion.[11] In funding year 2018, the E-Rate cap was $4.06 billion and demand for actual support was $2.77 billion.[12]

7. *Rural Health Care*. The Rural Health Care (RHC) Program provides funding to eligible healthcare providers for telecommunications and broadband services necessary for the provision of health care services. When the Commission established the RHC Program in 1997, it capped funding for the program at $400 million per funding year.[13] Beginning in 2012, the Commission expanded the RHC program to include the Healthcare Connect Fund Program,[14] after which total RHC program demand began to steadily increase. In June 2018, the Commission raised the RHC program funding cap to $571 million, beginning in funding year 2017, to address current and future demand for supported services by health care providers.[15] The Commission also adjusted the funding cap annually for inflation using the GDP-CPI inflation index, beginning in funding year 2018, raising the funding cap to $581 million.[16] In funding year 2016, RHC demand was approximately $556 million, and the total amount of qualifying

[7] *Id.* at 17847, paras. 559-62; 47 CFR § 54.709; *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 3021-22, paras. 70-71 (2018) (*2018 Rate-of-Return Reform Order*). The Commission subsequently made several decisions authorizing use of excess funds from the high-cost account. *See, e.g., Wireline Competition Bureau Provides Guidance to the Universal Service Administrative Company Regarding the High-Cost Universal Service Mechanism Budget*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 9243, 9244 & n.6 (WCB 2017).

[8] *USF/ICC Transformation Order*, 26 FCC Rcd at 17842-43, para. 546.

[9] In 2017, $4.692 billion was disbursed, however, after subtracting reserve funds, the total amount disbursed less reserves was $4.213 billion.

[10] *See Schools and Libraries Universal Service Support Mechanism*; *A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18782, para. 39 (2010). 47 CFR § 54.507(a).

[11] *See Modernizing the E-Rate Program for Schools and Libraries*; *Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15569, para. 79 (2014).

[12] *See Wireline Competition Bureau Announces E-rate Inflation-Based Cap for Funding Year 2018*, CC Docket No. 02-06, Public Notice, 33 FCC Rcd 1923 (WCB 2018); 47 CFR § 54.507(a)(3). *See Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests*, CC Docket No. 02-6, Public Notice, 33 FCC Rcd 8179 (WCB 2018).

[13] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-9161, paras. 608-749 (1997) (subsequent history omitted) (*Universal Service First Report and Order*); 47 CFR § 54.675(a).

funding requests was approximately $408 million.[17]

8. *Lifeline*. The Lifeline program provides subsidies for voice and broadband services to qualifying low-income households. In 2016, the Commission adopted a budget for the program of $2.25 billion with an annual inflation adjustment.[18] The Lifeline program budget does not automatically curtail disbursements,[19] and in the *2017 Lifeline Order and NPRM*, the Commission proposed adopting a self-enforcing budget mechanism for the Lifeline program.[20] At the same time, recent demand has been considerably lower than the authorized budget levels. For example, the Lifeline program disbursed approximately $1.263 billion in calendar year 2017 and is on track to spend approximately $1.212 billion in 2018,[21] compared to budgets of $2.25 billion and $2.279 billion in the respective years.

III. DISCUSSION

9. We believe capping the Fund overall will strike the appropriate balance between ensuring adequate funding for the universal service programs while minimizing the financial burden on ratepayers and providing predictability for program participants. Moreover, setting an overall cap will enable the Commission to take a more holistic view when considering future changes to the universal service programs and their impact on overall USF spending. By explicitly linking the expenditures in multiple USF programs through the overall cap, we seek to promote a robust debate on the relative effectiveness of the programs. We seek comment on establishing an annual combined USF cap. For example, should we set the overall cap at $11.42 billion, which is the sum of the authorized budgets for the four universal service programs in 2018?[22] Should we set it at a different amount? We seek comment on this proposal, as well as other methods for setting the appropriate level of an annual overall USF cap.

10. To ensure the overall cap keeps pace with inflation, we seek comment on how to adjust the cap over time. The Commission is currently using the Gross Domestic Product Chained Price Index (GDP-CPI) to adjust the E-Rate[23] and RHC program[24] caps, as well as the operating expense limitations

(Continued from previous page)
[14] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16717-20, 16728-65 paras. 83-93, 105-92 (2012); 47 CFR §§ 54.634, 54.633-639.

[15] *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6578-82, paras. 10-19 (2018) (*RHC Program Funding Cap Order*).

[16] *See RHC Program Funding Cap Order*, 33 FCC Rcd at 6582-84, paras. 20-23; 47 CFR § 54.675(a)(1)-(2).

[17] *See* USAC FY2016 Funding Information, https://www.usac.org/rhc/tools/funding-commitments/archive/default.aspx.

[18] *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4110, para. 400, 403 (2016) (*2016 Lifeline Order*).

[19] *Id.* at 4110, para. 402.

[20] *Bridging the Digital Divide for Low-Income Consumers et al.,* Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10510-12, paras. 105-06, 109 (2017) (*2017 Lifeline Order and NPRM*).

[21] USAC, Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2018, at 23, https://www.usac.org/about/tools/fcc/filings/2018/q3/USAC%203Q2018%20Federal%20Universal%20Service%20Mechanism%20Quarterly%20Demand%20Filing.pdf.

[22] The sum of the authorized program levels in 2018 is $11.42 billion ($2.28 billion for Lifeline, $4.5 billion for High Cost, $4.062 billion for E-Rate, and $581 million for RHC).

[23] 47 CFR § 54.507.

[24] 47 CFR § 54.675.

for rate-of-return carriers,[25] and has previously found it to be more accurate than some other measures in estimating price changes over time.[26] We seek comment on whether there are other ways to adjust the overall cap for inflation that would be more appropriate. Should there be an index specific to each USF program and how should such program-specific indices apply to an overall USF cap? Would this process make a significant difference to the caps compared to the use of the GDP-CPI? How often should the caps be adjusted? Commenters should provide data to support their conclusions.

11. The ten-year chart below provides data on the authorization and disbursements of the programs over the past five years and projected disbursements over the next five years, including 2019.

Disbursements and caps/budgets - Calendar Years 2014 through 2018 (in Billions of Dollars)[27]

Calendar Year	High-Cost Budget	*High-Cost Disbursements*	Lifeline Budget[28]	*Lifeline Disbursements*	RHC Cap	*RHC Disbursements*	E-Rate Cap	*E-Rate Disbursements*	TOTAL Budget/Cap[29]	*TOTAL Disbursements*
2014	$4.500	*$3.733*	*n/a*	*$1.660*	$0.400	*$0.193*	$2.414	*$2.269*	$8.974	*$7.855*
2015	$4.500	*$4.499*	*n/a*	*$1.514*	$0.400	*$0.279*	$3.900	*$2.080*	$10.314	*$8.372*
2016	$4.500	*$4.490*	*n/a*	*$1.537*	$0.400	*$0.298*	$3.939	*$2.387*	$10.376	*$8.711*
2017	$4.500	*$4.692*[30]	$2.250	*$1.263*	$0.571	*$0.262*	$3.990	*$2.650*	$11.311	*$8.867*
2018	$4.500	*$4.685*[31]	$2.279	*$1.143*	$0.581	*$0.299*	$4.06	*$2.205*	$11.42	*$8.332*

[25] 47 CFR § 54.303.

[26] *See, e.g.*, *Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 16-193, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 11716, 11729-30, paras. 24-26 (1996), and *Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 16-193, Report and Order, 12 FCC Rcd 8071, 8091-92, paras. 41-44 (1997).

[27] All figures from 2013-2016 are from Table 1.10 in the Commission's *2017 Monitoring Report*. The 2017 and 2018 figures can be found in the USAC Annual Reports for those years. Note that the data for E-Rate and RHC disbursements are based on calendar year while the cap is based on funding year.

[28] Lifeline did not have a budget until 2017.

[29] For years 2014-2016, the Total Budget/Cap was calculated by adding the actual budgets/caps for High-Cost, E-Rate, and RHC, plus the annual disbursements for Lifeline.

[30] The amount disbursed in 2017 included approximately $480 million from CAF reserves.

[31] The amount disbursed in 2018 included approximately $250 million from CAF reserves.

Projections - Fiscal Years 2019 through 2023 (in Billions of Dollars) [32]

Fiscal Year	Total Budget/Cap	*Total Disbursements*
2019	$11.662	$10.209
2020	$11.907	$10.491
2021	$12.154	$10.383
2022	$12.410	$10.348
2023	$12.671	$10.374

A. Implementation of the Overall Cap

12. We next seek comment on how to implement the cap. One method is to determine when disbursements are projected to exceed the overall USF cap and, in that event, to reduce projected universal service expenditures to stay within the cap. Another method, given the difference in some programs between the date of commitments and the date funding is disbursed, is to cap the commitments issued by USAC. We seek feedback on the best way to track and make public universal service demand levels to appropriately anticipate pending USF demand issues. In the event disbursements are projected to exceed the overall cap, we also seek comment on the appropriate way to reduce expenditures automatically consistent with the Commission's universal service goals and consistent with the legal imperative to remain within the cap.

13. *Tracking USF Demand Transparently*. A critical function of an effective cap mechanism is that the Commission can track projected demand and to correct potential overspending before the cap is reached. As part of its administrative duties, USAC projects demand for all four programs each quarter when it calculates the proposed contribution factor. We seek comment on using this existing mechanism to help USAC and the Commission project future disbursements compared to the overall cap. In particular, we seek comment on a process whereby USAC will notify the Commission staff if the quarterly demand calculation, either alone or in combination with other data, suggests the cap will be exceeded by future disbursements. USAC may base this prediction on the size of the quarterly demand projection when, for example, the quarterly demand alone exceeds one quarter of the overall cap, or when the quarterly data in combination with other information suggests an increase in future demand above the cap. We seek comment on this idea. USAC also issues commitments in some programs long before the funding is disbursed to recipients. Should the cap mechanism limit the commitments USAC makes or should it limit total disbursements? In determining the appropriate period of time over which to evaluate demand, should we consider the annual cap exceeded over the course of any 12-month period or should we evaluate the demand over the course of a calendar year? What about over the course of a funding year? Given the differences in administration of the four USF programs,[33] are there issues with the timing of commitments and disbursements to consider when projecting demand? Should any administrative rules for any program(s) be modified to synchronize them and eliminate or mitigate any differences that

[32] Projections are from the Table 26-1 of the 2019 President's Budget, https://www.whitehouse.gov/wp-content/uploads/2018/02/26-1-fy2019.pdf. Disbursement figures include total outlays. All Budgets/Caps for 2019-2023 are calculated using Lifeline's inflationary growth factor for 2018 which is 2.1%. *See Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, 33 FCC Rcd 6769 (WCB 2018) (announcing the Lifeline budget for the calendar year 2019 indexed to inflation using the Consumer Price-Index). These figures are estimates only, and will likely change when future inflation factors are officially announced and implemented before the relevant funding year.

[33] For example, E-Rate and RHC have separate filing windows; Lifeline demand may change quarterly and will vary from actual disbursements.

would be problematic to measuring demand? What about any timing issues with respect to the mitigation measures we would take to correct the projected overspending?

14. We also seek comment on extending our projections out further than one year to better anticipate potential spending over the cap. Limiting our forecasting to a single year could be insufficient to assess spending levels in future years, and the Commission would have a better opportunity to course-correct if it can evaluate demand over a more extended period of time. Should we also adopt procedures to establish a five-year forecast for projected program disbursements? We seek comment on this idea. Is a five-year period appropriate or feasible? Should we consider a different period of time?

15. As a first step towards greater transparency, we next seek comment on making these forecasts available to the public. USAC already makes public the quarterly demand projections and we believe providing an extended forecast to the public would assist the Commission in protecting the financial status of the Fund. Alternatively, we seek comment on making these forecasts available to state commissions. Sharing this forecast information would help to further our coordination with state commissions and allow states to continue to create complementary state universal support mechanisms. the public. We seek comment on the best process for making these forecasts available to state commissions or the public.

16. Additionally, we seek comment on how to address forecasting miscalculations and the potential impact on programs. For example, how would we correct a scenario where projected demand is expected to exceed the cap, but actual disbursements do not hit the cap? Or in the alternative, how should we correct a situation where actual commitments or disbursements exceed the cap, although the forecast did not anticipate an overage? How would we handle a temporary or one-time budget increase that hits the overall cap during a specific period? USAC already has experience correcting its projections for each of the programs when actual disbursements differ from its projections. Each quarter, USAC typically makes a prior period adjustment in one or more of the programs to account for actual program demand and this adjustment affects the demand for the next quarter as well as the contribution factor.[34] Would adopting a similar process work to help correct forecasting errors? How can we use USAC's prior period adjustment to adjust for miscalculations? Would more frequent forecasting help to mitigate potential forecasting errors? What other difficulties should we anticipate when forecasting demand and disbursements?

17. *Reduction Mechanisms.* Next, we seek comment on how to reduce expenditures if USAC projects that disbursements will exceed the overall USF cap. First, we note that the program rules for each of the four universal service programs will continue to govern those programs, and therefore existing spending constraints in place would prevent some, but not all, of the universal service programs from exceeding their caps.[35] The overall cap could be exceeded due to rising demand, or a future Commission decision to increase funding for a program or to institute a new USF program without any corresponding increase in the overall cap. We seek comment on ideas to reduce expenditures as needed under each of these scenarios. Should these reductions take place when commitments are expected to exceed the caps or should they only take place when disbursements are projected to exceed the caps? What criteria should be used in prioritizing reductions of one program against reduction in another?

18. First, we seek comment on directing USAC and Commission staff to make administrative changes to reduce the size or amount of funding available to the individual program caps in an upcoming year if demand is projected to exceed the overall cap. For instance, should we consider limiting some or all of the automatic inflation increases in the programs? We seek comment on this idea and on directing the Wireline Competition Bureau, which oversees the Universal Service Fund, or the Office of the

[34] *See* USAC, FCC Filings, https://www.usac.org/about/tools/fcc/filings/default.aspx.

[35] E-Rate and RHC currently operate under self-enforcing caps. The Commission has sought comment on adopting self-enforcing caps for Lifeline and High-Cost in separate proceedings.

Managing Director, which currently calculates the quarterly contribution factor, to carry it out. Are there other administrative changes we should consider that could provide greater flexibility to allow USAC and the Commission to address this issue, such as using reserve or carry forward funds to offset potential spending over the cap?

19. Second, we seek comment on prioritizing the funding among the four universal service programs and other possible universal service pilots or programs if still necessary to expenditures where USAC projects that total disbursements will exceed the overall cap. Adopting clear prioritization rules and evaluating the tradeoffs associated with these funding decisions could make disbursements more specific and predictable. We seek comment on the best methods for prioritizing funding when faced with projected disbursements exceeding the overall cap. How should we prioritize among the programs? For instance, should we prioritize based on the cost-effectiveness of each program or the estimated improper payment rates? Should we instead prioritize based on the types of services to be funded or by rurality of the recipient? We also seek comment on whether to consider limits to any demand reductions. Any prioritization will result in less funding available for one of the programs. In this instance, should there be a maximum amount that a program can be reduced, either as a percentage of its annual budget or a specific dollar amount? Should we instead consider reducing each program's disbursements by the same amount, rather than prioritizing funding among the programs? Under such an approach, unexpected increases in demand in one program could affect the funding levels of other programs that have not experienced similar unexpected increases in demand. Is this a desirable outcome? Should any funding reduction mechanism distinguish between increased demand due to natural, and other, disasters and unexpected increases in demand due to other factors? How do we account for future universal service expenditures that the Commission may create? In past years, the Commission has established pilot programs designed to test the use of universal service funding for new purposes and has also dedicated discrete amounts of funding for emergency purposes. How should those pilot program or emergency expenditures be prioritized in comparison to the existing programs for universal service funding? What other factors should we consider when considering how best to prioritize funding among the programs?

20. Finally, we seek comment on how to account for additional duties or obligations that the Commission might create in other proceedings that potentially would cause projected expenditures to exceed the cap within the next five years.[36] For example, if the Commission proposes to create a new USF program or allocate additional funding to a program, that action would not occur unless the Commission either: (a) cuts spending elsewhere to keep projected spending below the cap or (b) raises the overall cap. We seek comment on this idea.

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[36] For example, the Commission issued a Notice of Inquiry last year regarding a possible telehealth pilot program for low income consumers. *Promoting Telehealth for Low Income Consumers, Notice of Inquiry,* 33 FCC Rcd 7825 (2018). Separately, the Commission has proposed to prohibit the use of USF support to purchase equipment or services from any company identified as posing a national security risk to communications networks or the communications supply chain. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Notice of Proposed Rulemaking, 33 FCC Rcd 4058 (2018). In that proceeding, the Wireline Competition Bureau has sought comment on the relevance of Section 889(b) of the 2019 National Defense Authorization Act, including the directive in Section 889(b)(2) that heads of executive agencies, specifically including the FCC, shall "prioritize available funding and technical support" to help certain businesses, institutions, and organizations replace equipment produced by certain named companies to ensure that service to customers is sustained. *See Wireline Competition Bureau Seeks Comment on Section 889 of John S. McCain National Defense Authorization Act for Fiscal Year 2019*, WC Docket No. 18-89, Public Notice, DA 18-1099 (Oct. 26, 2018); John S. McCain National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong., PL 115-232, 132 Stat. 1636 (2018).

B. Proposed Changes to Individual Programs

21. We next seek comment on possible changes to the budget structures of the individual universal service programs in order to establish a maximum level of universal service support that can be disbursed annually, thus limiting contribution burdens and providing predictability to contributors and ratepayers. First, we seek comment on other changes to any of the universal service program rules that would assist the Commission in its efforts to achieve a more holistic and coherent approach to universal service support. For instance, consistent with previously-proposed rule changes,[37] would self-enforcing caps on each of the programs provide more predictability to universal service spending? Are there other changes that would better align the four programs to reduce duplicative work or simplify the administration of the overall cap?

22. Additionally, we seek comment on how best to balance program needs with the contribution burdens imposed on ratepayers. In particular, we request information and data related to the economic efficiency costs associated with increasing contributions above current levels. Estimating the benefits of these programs could allow us to prioritize them by their cost effectiveness.[38] Are there ways to compare effectiveness across the programs more holistically in order to measure program efficiency? How should we balance the benefits of the different programs with the costs of increased contributions by ratepayers? We seek concrete proposals that illustrate how program effectiveness would be measured and how it would affect the allocation of contributions between the individual programs. Weighing the costs of increased contributions against the estimated benefits of the programs could allow the Commission to better assess whether funds are allocated efficiently. We seek comment on this idea and encourage commenters to include data to support their conclusions.

23. We also seek comment on combining the E-Rate and RHC program caps. Schools, libraries, and healthcare facilities increasingly offer important community resources over their broadband networks. Combining the program caps may be justifiable given that both programs promote the use of advanced services to anchor institutions that have similar needs for high-quality broadband services. Additionally, many of these institutions often operate through consortia for the purpose of simplifying applications for program support and lowering the costs for participating members. In other USF proceedings, some stakeholders have asked the Commission to reexamine the rules to better harmonize the USF program rules.[39] It is reasonable, therefore, to consider combining the caps to create additional implementation efficiencies and flexibility. However, is administrative simplicity a sufficient reason to

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[37] *See, e.g.*, *Rate of Return Order and NPRM; 2017 Lifeline Order and NPRM.*

[38] The high-cost, low-income, and schools and libraries USF programs currently use separate measures of program effectiveness in connection with their respective program goals. For example, the High-Cost program measures effectiveness using telephone penetration rates, as well as the number of residential, business, and community anchor institution locations that newly gain access to broadband service. *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17680-17681, para. 50-52 (2011). In the Lifeline program, the Commission directed USAC to work with an independent, third-party evaluator to complete an evaluation of the Lifeline program's design, function, and administration. *See Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4112-4113, paras. 409-410 (2016). And within the E-Rate program, effectiveness is measured on prices paid as a function of bandwidth and also as a function of number of users in schools and libraries. *See Modernizing the E-rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8890-8891, paras. 51-54 (2014).

[39] *See, e.g.*, Schools, Health, & Libraries Broadband Coalition Comments, WC Docket No. 13-184 (Sept. 15, 2014).

combine the programs under a single cap? Does combining the caps promote efficient use of limited funds if the effectiveness of the two programs differ significantly?

24. We seek comment on the practical effect of combining the E-rate and Rural Health Care budgets. While the E-rate program has been substantially under its cap since its budget was increased to approximately $4 billion per year indexed to inflation in 2014, there has been significant pressure on the Rural Health Care budget in recent years, and the Commission in 2018 increased the Rural Health Care budget to $571 million indexed to inflation. Assuming current trends persist in future years, would a combined budget that allows support for participants in either program to come from a single fund improve the efficiency with which these programs could disburse funding? Would a combined budget effectively increase the budget on whichever program is closest to their cap?

25. Under this proposal, both the E-Rate and RHC programs would share a combined total cap of more than $4.64 billion in funding year 2018 and as long as total demand for both programs did not exceed the combined cap, all funding requests for both programs would be approved. To ensure that each program has a predictable level of support, we also propose that if demand for either programs were to meet or exceed their individual program funding caps, each program would continue to be subject to its individual program cap and the existing program rules would apply. For example, if in funding year 2018 demand for E-Rate support exceeded the E-Rate cap and demand for RHC support also exceeded that program's existing cap, E-Rate requests would be prioritized according to current E-rate program rules, up to $4.062 billion, and RHC requests would be subject to the proration rules in effect in RHC, up to $581 million.[40] We also believe that rules pertaining to carrying funds forward, inflationary adjustments, prioritization, and proration would continue to apply within each of the individual programs.[41] We seek comment on this proposal. Is there any downside to such a proposal? We also seek comment on the mechanics of how we would distribute funding under a combined, prioritization scheme.

IV. PROCEDURAL MATTERS

26. *Initial Paperwork Reduction Act of 1995 Analysis*. 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).

27. *Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules considered in the Notice. This analysis is found in the Appendix. The Notice seeks comment on a potential new or revised information collection requirement. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[42]

28. *Ex Parte Presentations*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[43] Persons making

[40] If a decision was made to raise one of the two individual caps, such that both the individual caps violated the overall cap, then this would force a decision as to whether the overall cap should be raised, or the other cap reduced or some combination of both.

[41] *See* 47 CFR §§ 54.507, 54.675.

[42] *See* 5 U.S.C. § 603(a).

[43] 47 CFR §§ 1.1200 *et seq.*

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

29. *Comment Filing Procedures*. Pursuant to sections 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 the Commission's Electronic Comment Filing System (ECFS). *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: https://www.fcc.gov/ecfs/

- Paper Filers: Parties who choose to file by paper must file an original and one copy 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. 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 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

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

30. *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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

31. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply

comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Notice in order to facilitate our internal review process.

32. *Additional Information*. For additional information on this proceeding, contact Karen Sprung of the Wireline Competition Bureau, Telecommunications Access Policy Division, Karen.Sprung@fcc.gov or (202) 418-7400.

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1-5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 403, and 405, this Notice of Proposed Rulemaking IS ADOPTED.

34. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the 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).[2] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[3]

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

2. This Notice of Proposed Rulemaking seeks comment on a proposal to adopt an overall cap on the Universal Service Fund and to combine the caps for the schools and libraries (otherwise known as E-Rate) and Rural Health Care programs in an effort to promote efficiency, fairness, and sustainability. This action is taken consistent with the Commission's objective to preserve and advance universal service, together with its obligation to protect against program waste, fraud, and abuse, and to ensure that programs are funded appropriately. A cap will limit the overall contribution burden and will provide regulatory and financial certainty to both recipients of and contributors to the Fund, including small businesses.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1-5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[6] A small-business

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *Id.*

[4] *See* 5 U.S.C. § 603(b)(3).

[5] *See* 5 U.S.C. § 601(6).

[6] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

1. Total Small Entities

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[8] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[9] These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.[10]

6. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[11] Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).[12]

7. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[13] U.S. Census Bureau data from the 2012 Census of Governments[14] indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[15] Of this number there were 37, 132 General purpose governments (county[16], municipal and town or township[17]) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts[18] and special districts[19]) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of

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[7] *See* 15 U.S.C. § 632.

[8] *See* 5 U.S.C. § 601(3)-(6).

[9] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

[10] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small business are there in the U.S.?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[11] 5 U.S.C. § 601(4).

[12] Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS were used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000.Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. *See* http://nccs.urban.org/sites/all/nccs-archive/html//tablewiz/tw.php where the report showing this data can be generated by selecting the following data fields: Report: "The Number and Finances of All Registered 501(c) Nonprofits"; Show: "Registered Nonprofits"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results".

[13] 5 U.S.C. § 601(5).

[14] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Program Description Census of Government *https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#.*

governments in the local government category show that the majority of these governments have populations of less than 50,000.[20] Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."[21]

2. Broadband Internet Access Service Providers

8. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.[22] Wired Telecommunications Carriers are comprised of 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.[23] The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.[24] U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[25] Consequently, under this size standard the majority of firms in this industry can be considered small.

3. Wireline Providers

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities

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[15] *See* U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

[16] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01. There were 2,114 county governments with populations less than 50,000.

[17] *See* U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

[18] *See* U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. There were 12,184 independent school districts with enrollment populations less than 50,000.

[19] *See* U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01. The U.S. Census Bureau data did not provide a population breakout for special district governments.

[20] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States.

(continued….)

and infrastructure that they operate are included in this industry."[26] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[27] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[28] Of this total, 3,083 operated with fewer than 1,000 employees.[29] Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[30] According to Commission data,[31] 1,307 carriers reported that they were incumbent LEC providers.[32] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[33] Consequently, the Commission estimates that most providers of incumbent LEC service are small businesses.

11. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[34] According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[35] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[36] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[37] In addition, 72 carriers have reported that they are Other Local Service Providers.[38]

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https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

[21] *Id.*

[22] *See*, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICs code as 517311. *See*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017

[23] *Id.*

[24] *Id.*

[25] *See* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[26] *See* 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. *See*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[27] *Id*.

[28] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[39] 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.

12. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[40] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[41] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[42] According to Commission data,[43] 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities.

14. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[44] According to Commission data, 33 carriers have

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[29] *Id.*

[30] 13 CFR § 121.201, NAICS code 517311.

[31] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[32] *See Trends in Telephone Service* at tbl. 5.3.

[33] *See id*.

[34] 13 CFR § 121.201, NAICS code 517311.

[35] *See Trends in Telephone Service* at tbl.5.3.

[36] *See id.*

[37] *See id*.

[38] *See id*.

[39] *See id*.

[40] 5 U.S.C. § 601(3).

[41] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

[42] 13 CFR § 121.201, NAICS code 517311.

reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.[45] Consequently, the Commission estimates that the majority of OSPs are small entities.

15. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[46] According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[47] Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[48] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICs code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[49] Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.[50] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.[51] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[52] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[53] Consequently, the Commission estimates that the majority of local resellers are small entities.

16. *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.[54] According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[55] Of these, an estimated 857 have 1,500 or fewer employees and 24 have

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[43] *Trends in Telephone Service*, tbl. 5.3.

[44] 13 CFR § 121.201, NAICS code 517311.

[45] *Trends in Telephone Service*, tbl. 5.3.

[46] *See* 13 CFR § 121.201, NAICS code 517911.

[47] *See Trends in Telephone Service* at Table 5.3.

[48] *See id*.

[49] https://www.census.gov/cgi-in/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012.

[50] 13 CFR § 121.201, NAICS code 517911.

[51] U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.s

[52] *See Trends in Telephone Service* at Table 5.3.

[53] *See id*.

[54] *See* 13 CFR § 121.201, NAICS code 517911.

[55] *See Trends in Telephone Service* at Table 5.3.

more than 1,500 employees.[56] Consequently, the Commission estimates that the majority of toll resellers are small entities.

17. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[57] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[58] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[59] Consequently, the Commission estimates that most Other Toll Carriers are small.

18. *800 and 800-Like Service Subscribers*.[60] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[61] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.[62] According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.[63] We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

4. Wireless Providers – Fixed and Mobile

19. The broadband Internet access service provider category covered by this Order may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

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[56] *See id*.

[57] *See* 13 CFR § 121.201, NAICS code 517311.

[58] *See Trends in Telephone Service* at Table 5.3.

[59] *See id*.

[60] We include all toll-free number subscribers in this category, including those for 888 numbers.

[61] *See* 13 CFR § 121.201, NAICS code 517911.

[62] *See Trends in Telephone Service* at Tables 18.7-18.10.

[63] *See id*.

20. *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 services, paging services, wireless internet access, and wireless video services.[64] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[65] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[66] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[67] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

21. *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.[68] The SBA has approved these small business size standards.[69] In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

22. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[70] In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[71] A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an

[64] U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)," *See* https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210.

[65] 13 CFR § 121.201, NAICS code 517210.

[66] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[67] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[68] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[69] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998) (*Alvarez Letter 1998*).

[70] *See generally Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[71] *See generally Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999) (*218-219 MHz Report and Order and Memorandum Opinion and Order*).

entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[72] These size standards will be used in future auctions of 218-219 MHz spectrum.

23. *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.[73] The SBA has approved these definitions.[74] 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.

24. *1670–1675 MHz Services*. This service can be used for fixed and mobile uses, except aeronautical mobile.[75] 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.

25. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)[76] and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.[77] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[78] Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1000 employees or more.[79] Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.[80] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[81] Therefore, more than half of these entities can be considered small.

26. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three

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[72] *See id*.

[73] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[74] *See Alvarez Letter 1998*.

[75] 47 CFR § 2.106; *see generally* 47 CFR §§ 27.1-27.70.

[76] 13 CFR § 121.201, NAICS code 517210.

[77] *Id.*

[78] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[79] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[80] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[81] *Id.*

previous calendar years.[82] For F-Block licenses, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[83] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[84] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40% of the 1,479 licenses in the first auction for the D, E, and F Blocks.[85] On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.[86] Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

27. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.[87] Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.[88] On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.[89] Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.[90] On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.[91] Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.[92]

28. *Specialized Mobile Radio Licenses.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar

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[82] *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*; WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (PCS Report and Order); *see also* 47 CFR § 24.720(b).

[83] *See PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

[84] *See Alvarez Letter 1998.*

[85] *See Broadband PCS*, *D*, *E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

[86] *See C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768, para. 46 (1998).

[87] *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

[88] *See Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

[89] *See Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

[90] *Id*.

[91] *See Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

years.[93] 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.[94] The SBA has approved these small business size standards for the 900 MHz Service.[95] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[96] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[97]

29. 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 and qualified as small businesses under the $15 million size standard.[98] 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.[99] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

30. In addition, there are numerous incumbent site-by-site SMR licenses 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 service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard.[100] We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

31. *Lower 700 MHz Band Licenses*. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[101] The Commission defined a "small business" as an entity that, together with its

(Continued from previous page)
[92] *Id.*

[93] 47 CFR § 90.814(b)(1).

[94] *Id*.

[95] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (filed Aug. 10, 1999) (*Alvarez Letter 1999*).

[96] *See* Correction to Public Notice DA 96-586, *FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas*, Public Notice, 18 FCC Rcd 18367 (WTB 1996).

[97] *See Multi-Radio Service Auction Closes, Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

[98] *See 800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (2000).

[99] *See 800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (2000).

[100] *See generally* 13 CFR § 121.201, NAICS code 517210.

[101] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52–59 Report and Order*).

affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[102] 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.[103] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—"entrepreneur"—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[104] The SBA approved these small size standards.[105] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[106] A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[107] 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.[108] On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

32. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.[109] An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block.[110] Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

33. *Upper 700 MHz Band Licenses*. In the *700 MHz Second Report and Order*, the Commission

[102] *See id.* at 1087-88, para. 172.

[103] *See id*.

[104] *See id.*, at 1088, para. 173.

[105] *See Alvarez Letter 1999*.

[106] *See Lower 700 MHz Band Auction Closes*, Public Notice, 17 FCC Rcd 17272 (WTB 2002).

[107] *See id.*

[108] *See id.*

[109] *Service Rules for the 698–746, 747–762 and 777–792 MHz Band; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule*, WT Docket Nos. 07-166, 06-169, 06-150, 03-264, 96-86, PS Docket No. 06-229, CC Docket No. 94-102, Second Report and Order, 22 FCC Rcd 15289, 15359 n. 434 (2007) (*700 MHz Second Report and Order*).

[110] *See Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

revised its rules regarding Upper 700 MHz licenses.[111] On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.[112] The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

34. *700 MHz Guard Band Licensees*. In 2000, 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.[113] 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.[114] 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.[115] SBA approval of these definitions is not required.[116] An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000.[117] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[118]

35. *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.[119] Bidding credits for designated entities were not available in Auction 77.[120] 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.[121]

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[111] *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

[112] *See Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

[113] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*746–764 MHz Band Second Report and Order*).

[114] *See id*. at 5343, para. 108.

[115] *See id*.

[116] *See id.* at 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[117] *See 700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (WTB 2000).

[118] *See 700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (WTB 2001).

[119] *See Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77*, Public Notice, 23 FCC Rcd 6670 (Wireless Tel. Bur. 2008).

[120] *Id*. at 6685.

[121] *See Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008*, Public Notice, 23 FCC Rcd 9501 (WTB 2008).

36. *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.[122] 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.[123]

37. 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.

38. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[124] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[125] 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.[126] 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.

39. *Air-Ground Radiotelephone Service*. The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons.[127] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 had employment of 1000 employees or more.[128] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[129] A "very small business" is defined as an entity that, together

[122] *See* 13 CFR § 121.201, NAICS code 517210.

[123] *See generally* 13 CFR § 121.201.

[124] The service is defined in 47 CFR § 22.99.

[125] BETRS is defined in 47 CFR §§ 22.757 and 22.759.

[126] 13 CFR § 121.201, NAICS code 517210.

[127] 13 CFR § 121.201, NAICS codes 517210.

[128] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[129] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services*, *Biennial Regulatory Review—Amendment of Parts 1*, *22*, *and 90 of the Commission's Rules*, *Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General*

(continued….)

with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[130] These definitions were approved by the SBA.[131] In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

40. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[132] U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[133] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[134] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars.[135] In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[136] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

41. *Advanced Wireless Services (AWS) (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175*

(Continued from previous page)
Aviation Air-Ground Radiotelephone Service, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28-42 (2005).

[130] *Id.*

[131] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission (filed Sept. 19, 2005).

[132] *See* 13 CFR § 121.201, NAICS code 517210.

[133] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[134] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[135] *See generally Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88 paras. 64–73 (1998).

[136] *See id*.

MHz band (AWS-3)). For the AWS-1 bands,[137] the Commission has defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS-2 and AWS-3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.[138]

42. *3650–3700 MHz band*. In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

43. *Fixed Microwave Services.* Microwave services include common carrier,[139] private-operational fixed,[140] and broadcast auxiliary radio services.[141] They also include the Local Multipoint Distribution Service (LMDS),[142] the Digital Electronic Message Service (DEMS),[143] and the 24 GHz Service,[144] where licensees can choose between common carrier and non-common carrier status.[145] At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate

[137] The service is defined in section 90.1301 *et seq*. of the Commission's Rules, 47 CFR § 90.1301 *et seq*.

[138] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162, Appx. B (2003), *modified by Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Order on Reconsideration, 20 FCC Rcd 14058, Appx. C (2005); *Service Rules for Advanced Wireless Services in the 1915–1920 MHz*, *1995–2000 MHz*, *2020–2025 MHz and 2175–2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket Nos. 04-356, 02-353, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, Appx. B (2005); *Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band*, WT Docket No. 07-195, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, Appx. (2007).

[139] *See* 47 CFR Part 101, Subparts C and I.

[140] *See* 47 CFR Part 101, Subparts C and H.

[141] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[142] *See* 47 CFR Part 101, Subpart L.

[143] *See* 47 CFR Part 101, Subpart G.

[144] *See id*.

[145] *See* 47 CFR §§ 101.533, 101.1017.

size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.[146] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[147] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[148] Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

44. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category does include some large entities.

45. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[149] There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[150] U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[151] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[152] Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

46. *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.[153] 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.[154] The

[146] *See* 13 CFR § 121.201, NAICS code 517210.

[147] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series, "Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210" (rel. Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[148] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[149] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR §§ 22.1001-22.1037.

[150] *Id*.

[151] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[152] *Id*. Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[153] *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661–64, paras. 149–151 (1997).

[154] *See id.*

SBA has approved these small business size standards.[155] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

47. *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)).[156] 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.[157] 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.[158] 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.

48. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[159] The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15% discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25% discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35% discount on its winning bid.[160] Auction 86 concluded in 2009 with the sale of 61 licenses.[161] Of the ten

[155] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

[156] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[157] 47 CFR § 21.961(b)(1).

[158] 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

[159] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, AU Docket No. 09-56, *Public Notice*, 24 FCC Rcd 8277 (2009).

[160] *Id.* at 8296 para. 73.

[161] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice*, 24 FCC Rcd 13572 (2009).

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.

49. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[162] Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[163] 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 the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[164] U.S. Census data for 2012 show that there were 3,117 firms that operated that year.[165] Of this total, 3,083 operated with fewer than 1,000 employees.[166] Thus, the majority of these firms can be considered small.

50. *Narrowband Personal Communications Services*. Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses.[167] 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.[168]

51. *Paging (Private and Common Carrier)*. In the *Paging Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes

[162] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

[163] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," (partial definition), http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012.

[164] 13 CFR § 121.201, NAICS code 517110.

[165] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

[166] *Id.*

[167] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

[168] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998) (*Alvarez Letter 1998*).

of determining their eligibility for special provisions such as bidding credits and installment payments.[169] A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards.[170] According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.[171] Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees.[172] Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses.[173] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[174] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[175] A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.[176]

52. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.[177] The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

53. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third*

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[169] *See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085–88, paras. 98–107 (1999) (*Paging Third Report and Order*)

[170] *See Alvarez Letter 1998*.

[171] *See Trends in Telephone Service* at Table 5.3.

[172] *See id*.

[173] *See id*.

[174] *See Lower and Upper Paging Band Auction Closes, Public Notice*, 16 FCC Rcd 21821 (WTB 2002).

[175] *See Lower and Upper Paging Bands Auction Closes, Public Notice*, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[176] *See Auction of Lower and Upper Paging Bands Licenses Closes*, Public Notice, 25 FCC Rcd 18164 (Wireless Tel. Bur. 2010).

[177] *See* 13 CFR § 121.201, NAICS code 517210.

Report and Order, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[178] This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[179] A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[180] The SBA has approved these small business size standards.[181] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[182] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[183]

5. Satellite Service Providers

54. *Satellite Telecommunications Providers.* This category comprises firms "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."[184] Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules.[185] For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.[186] Of this total, 299 firms had annual receipts of less than $25 million.[187] Consequently, we estimate that the majority of satellite telecommunications providers are small entities. Cable Service Providers

55. Because section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including

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[178] *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

[179] *See id*. at 11068–69, para. 291.

[180] *See id*. at 11068–70, paras. 291–95.

[181] *See* Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998) (*Alvarez to Phythyon Letter 1998*).

[182] *See Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (Wireless Tel. Bur. 1998).

[183] *See Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (Wireless Tel. Bur.1999).

[184] U.S. Census Bureau, 2017 NAICS Definitions, "517410 Satellite Telecommunications"; https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017.

[185] 13 CFR § 121.201, NAICS code 517410.

[186] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517410.

[187] *Id*.

cable companies, MDS providers, and utilities, among others.

56. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[188] The SBA size standard for this industry establishes as small, any company in this category which has annual receipts of $38.5 million or less.[189] According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year.[190] Of that number, 319 operated with annual receipts of less than $25 million a year and 48 firms operated with annual receipts of $25 million or more.[191] Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

57. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[192] Industry data indicate that there are currently 4,600 active cable systems in the United States.[193] Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.[194] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[195] Current Commission records show 4,600 cable systems nationwide.[196] Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[197] Thus, under this standard as well, we estimate that most cable systems are small entities.

58. *Cable System Operators (Telecom Act Standard).* 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 one% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed

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[188] *See* U.S. Census Bureau, 2012 NAICS Definitions, "515210 Cable and other Subscription Programming", *https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.515210#.*

[189] *See* 13 C.F.R. 121.201, NAICS Code 515210.

[190] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab & Firm Size: Receipts Size of Firms for the U.S.: 2012, NAICS Code 515210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515210.

[191] *Id*. Available census data do not provide a more precise estimate of the number of firms that have receipts of $38.5 million or less.

[192] 47 CFR § 76.901(e).

[193] The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 15, 2015. *See* FCC, *Cable Operations and Licensing System (COALS)*, www.fcc.gov/coals (last visited Oct. 25, 2016).

[194] *See* SNL KAGAN, *Top Cable MSOs*, https://www.snl.com/Interactivex/TopCableMSOs.aspx (last visited Oct. 25, 2016).

[195] 47 CFR § 76.901(c).

[196] *See March 31, 2013 Broadcast Station Totals Press Release.*

[197] *See* FCC, *Cable Operations and Licensing System (COALS)*, www.fcc.gov/coals (last visited Oct. 25, 2016).

$250,000,000."[198] There are approximately 52,403,705 cable video subscribers in the United States today.[199] Accordingly, an operator serving fewer than 524,037 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.[200] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[201] 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.[202] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

59. 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.[203] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[204] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[205] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[206] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[207] Of this total, 3,083 operated with fewer than 1,000 employees.[208] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[209] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[210] The Commission does not have financial or

[198] 47 CFR § 76.90(f) and notes ff. 1, 2, and 3.

[199] *See* SNL KAGAN at http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx.

[200] 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

[201] *See* SNL KAGAN at http://www.snl.com/interactivex/TopCable MSOs.aspx.

[202] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR § 76.901(f).

[203] 47 U.S.C. § 571(a)(3)-(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, para. 135 (2009) (*Thirteenth Annual Cable Competition Report*).

[204] *See* 47 U.S.C. § 573.

[205] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[206] *Id*.

[207] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

[208] *Id.*

[209] A list of OVS certifications may be found at http://www.fcc.gov/mb/ovs/csovscer.html.

[210] *See Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

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.

6. Electric Power Generators, Transmitters, and Distributors

60. *Electric Power Generators*, *Transmitters*, *and Distributors.* This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[211] The closest applicable SBA category is “All Other Telecommunications”. The SBA’s small business size standard for “All Other Telecommunications,” consists of all such firms with gross annual receipts of $32.5 million or less.[212] For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[213] Consequently, we estimate that under this category and the associated size standard the majority of these firms can be considered small entities.

7. Healthcare Providers

61. *Offices of Physicians (except Mental Health Specialists).* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[214] The SBA has created a size standard for this industry, which is annual receipts of $11 million or less.[215] According to 2012 U.S. Economic Census, 152,468 firms operated throughout the entire year in this industry.[216] Of that number, 147,718 had annual receipts of less than $10 million, while 3,108 firms had annual receipts between $10 million and $24,999,999.[217] Based on this data, we conclude that a majority of firms operating in this industry are small under the applicable size standard.

62. *Offices of Physicians, Mental Health Specialists.* This U.S. industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of psychiatry or psychoanalysis. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the

[211] *See* http://www.census.gov/cgi-bin/ssssd/naics/naicsrch.

[212] 13 CFR § 121.201; NAICS Code 517919.

[213] *See* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

[214] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621111 “Offices of Physicians (except Mental Health Specialists)” https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621111&search=2012+NAICS+Search&search=2012.

[215] 13 CFR § 121.201, NAICS Code 621111.

[216] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States:* 2012, NAICS code 621111, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621111.

[217] *Id*. The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $11 million or less.

facilities of others, such as hospitals or HMO medical centers.[218] The SBA has established a size standard for businesses in this industry, which is annual receipts of $11 million dollars or less.[219] The U.S. Economic Census indicates that 8,809 firms operated throughout the entire year in this industry.[220] Of that number 8,791 had annual receipts of less than $10 million, while 13 firms had annual receipts between $10 million and $24,999,999.[221] Based on this data, we conclude that a majority of firms in this industry are small under the applicable standard.

63. *Offices of Dentists.* This U.S. industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry.[222] The SBA has established a size standard for that industry of annual receipts of $7.5 million or less.[223] The 2012 U.S. Economic Census indicates that 115,268 firms operated in the dental industry throughout the entire year.[224] Of that number 114,417 had annual receipts of less than $5 million, while 651 firms had annual receipts between $5 million and $9,999,999.[225] Based on this data, we conclude that a majority of business in the dental industry are small under the applicable standard.

64. *Offices of Chiropractors.* This U.S. industry comprises establishments of health practitioners having the degree of D.C. (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[226] The SBA has established a size standard for this industry, which is annual receipts of $7.5 million or less.[227] The 2012 U.S. Economic Census

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[218] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621112 "Offices of Physicians, Mental Health Specialists", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621112&search=2012+NAICS+Search&search=2012.

[219] 13 CFR § 121.201, NAICS Code 621112.

[220] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621112, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621112.

[221] *Id*. The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $11 million or less.

[222] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621210 "Offices of Dentists", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621210&search=2012+NAICS+Search&search=2012.

[223] 13 CFR § 121.201, NAICS Code 621210.

[224] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States:* 2012, NAICS code 621210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621210.

[225] *Id*. The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $7.5 million or less.

[226] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621310 "Offices of Chiropractors", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621310&search=2012+NAICS+Search&search=2012. See also NAICS code 621310, 13 CFR § 121.201.

[227] 13 CFR § 121.201, NAICS Code 621310.

statistics show that in 2012, 33,940 firms operated throughout the entire year.[228] Of that number 33,910 operated with annual receipts of less than $5 million per year, while 26 firms had annual receipts between $5 million and $9,999,999.[229] Based on that data, we conclude that a majority of chiropractors are small.

65. *Offices of Optometrists.* This U.S. industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact lenses.[230] The SBA has established a size standard for businesses operating in this industry, which is annual receipts of $7.5 million or less.[231] The 2012 Economic Census indicates that 18,050 firms operated the entire year.[232] Of that number, 17,951 had annual receipts of less than $5 million, while 70 firms had annual receipts between $5 million and $9,999,999.[233] Based on this data, we conclude that a majority of optometrists in this industry are small.

66. *Offices of Mental Health Practitioners (except Physicians).* This U.S. industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[234] The SBA has created a size standard for this industry, which is annual receipts of $7.5 million or less. [235] The 2012 U.S. Economic Census indicates that 16,058 firms operated throughout the entire year.[236] Of that number, 15,894 firms received annual receipts of less than $5

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[228] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621310, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621310.

[229] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $7.5 million or less.

[230] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621320 "Offices of Optometrists", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621320&search=2012+NAICS+Search&search=2012.

[231] 13 CFR § 121.201, NAICS code 621320.

[232] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621320, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621320.

[233] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $7.5 million or less.

[234] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621330 "Offices of Mental Health Practitioners (except Physicians)", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621330&search=2012+NAICS+Search&search=2012.

[235] 13 CFR § 121.201 NAICS Code 621330.

[236] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621330, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621330.

million, while 111 firms had annual receipts between $5 million and $9,999,999.[237] Based on this data, we conclude that a majority of mental health practitioners who do not employ physicians are small.

67. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This U.S. industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[238] The SBA has established a size standard for this industry, which is annual receipts of $7.5 million or less.[239] The 2012 U.S. Economic Census indicates that 20,567 firms in this industry operated throughout the entire year.[240] Of this number, 20,047 had annual receipts of less than $5 million, while 270 firms had annual receipts between $5 million and $9,999,999.[241] Based on this data, we conclude that a majority of businesses in this industry are small.

68. *Offices of Podiatrists.* This U.S. industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[242] The SBA has established a size standard for businesses in this industry, which is annual receipts of $7.5 million or less.[243] The 2012 U.S. Economic Census indicates that 7,569 podiatry firms operated throughout the entire year.[244] Of that number, 7,545 firms had annual receipts of less than $5 million, while 22 firms had annual receipts between $5 million and $9,999,999.[245] Based on this data, we conclude that a majority of firms in this industry are small.

69. *Offices of All Other Miscellaneous Health Practitioners.* This U.S. industry comprises

[237] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $7.5 million or less.

[238] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621340 "Offices of Physical, Occupational and Speech Therapists and Audiologists", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621340&search=2012+NAICS+Search&search=2012.

[239] 13 CFR § 121.201, NAICS Code 621340.

[240] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621340, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621340.

[241] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $7.5 million or less.

[242] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621391 "Offices of Podiatrists", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621391&search=2012+NAICS+Search&search=2012.

[243] 13 CFR § 121.201, NAICS Code 621391.

[244] U.S. Census Bureau, 2012 Economic Census of the United States, Table EC1262SSSZ4, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States: 2012, NAICS code 621391, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621391.

[245] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $7.5 million or less.

establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (e.g., centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers.[246] The SBA has established a size standard for this industry, which is annual receipts of $7.5 million or less.[247] The 2012 U.S. Economic Census indicates that 11,460 firms operated throughout the entire year.[248] Of that number, 11,374 firms had annual receipts of less than $5 million, while 48 firms had annual receipts between $5 million and $9,999,999.[249] Based on this data, we conclude the majority of firms in this industry are small.

70. *Family Planning Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy.[250] The SBA has established a size standard for this industry, which is annual receipts of $11 million or less.[251] The 2012 Economic Census indicates that 1,286 firms in this industry operated throughout the entire year.[252] Of that number 1,237 had annual receipts of less than $10 million, while 36 firms had annual receipts between $10 million and $24,999,999.[253] Based on this data, we conclude that the majority of firms in this industry are small.

71. *Outpatient Mental Health and Substance Abuse Centers*. This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary.[254] The SBA has established a size standard for this industry, which is $15 million or less in annual receipts.[255] The 2012 U.S. Economic Census indicates that 4,446 firms operated throughout the entire year.[256] Of that number, 4,069

[246] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621399 "Offices of All Other Miscellaneous Health Practitioners", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621399&search=2012+NAICS+Search&search=2012.

[247] 13 CFR § 121.201, NAICS Code 621399.

[248] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4, *Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621399, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621399.

[249] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $7.5 million or less.

[250] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621410 "Family Planning Centers", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621410&search=2012+NAICS+Search&search=2012.

[251] 13 CFR § 121.201, NAICS Code 621410.

[252] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621410, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621410.

[253] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $11 million or less.

[254]See U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621420 "Outpatient Mental Health and Substance Abuse Centers", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621420&search=2012+NAICS+Search&search=2012.

[255] 13 CFR § 121.201 NAICS Code 621420.

had annual receipts of less than $10 million while 286 firms had annual receipts between $10 million and $24,999,999.[257] Based on this data, we conclude that a majority of firms in this industry are small.

72. *HMO Medical Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the health maintenance organization (HMO) subscribers with a focus generally on primary health care. These establishments are owned by the HMO. Included in this industry are HMO establishments that both provide health care services and underwrite health and medical insurance policies.[258] The SBA has established a size standard for this industry, which is $32.5 million or less in annual receipts.[259] The 2012 U.S. Economic Census indicates that 14 firms in this industry operated throughout the entire year.[260] Of that number, 5 firms had annual receipts of less than $25 million, while 1 firm had annual receipts between $25 million and $99,999,999.[261] Based on this data, we conclude that approximately one-third of the firms in this industry are small.

73. *Freestanding Ambulatory Surgical and Emergency Centers.* This U.S. industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (e.g., orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (e.g., setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment.[262] The SBA has established a size standard for this industry, which is annual receipts of $15 million or less.[263] The 2012 U.S. Economic Census indicates that 3,595 firms in this industry operated throughout the entire year.[264] Of that number, 3,222 firms had annual receipts of less than $10 million, while 289 firms had annual receipts between $10 million and $24,999,999.[265] Based on this data, we conclude that a majority of firms in this industry are

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[256] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621420, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621420.

[257] *Id*. The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $15 million or less.

[258] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621491 "HMO Medical Centers", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621491&search=2012+NAICS+Search&search=2012.

[259] 13 CFR § 121.201 NAICS code 621491.

[260] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621491, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621491.

[261] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $32.5 million or less.

[262] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621493 "Freestanding Ambulatory Surgical and Emergency Centers", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621493&search=2012+NAICS+Search&search=2012.

[263] 13 CFR § 121.201 NAICS Code 621493.

[264] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621493, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621493.

[265] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $15 million or less.

small.

74. *All Other Outpatient Care Centers***.** This U.S. industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (i.e., Doctor of Medicine and Doctor of Dental Medicine) are included in this industry.[266] The SBA has established a size standard for this industry, which is annual receipts of $20.5 million or less.[267] The 2012 U.S. Economic Census indicates that 4,903 firms operated in this industry throughout the entire year.[268] Of this number, 4,269 firms had annual receipts of less than $10 million, while 389 firms had annual receipts between $10 million and $24,999,999.[269] Based on this data, we conclude that a majority of firms in this industry are small

75. *Blood and Organ Banks.* This U.S. industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs.[270] The SBA has established a size standard for this industry, which is annual receipts of $32.5 million or less.[271] The 2012 U.S. Economic Census indicates that 314 firms operated in this industry throughout the entire year.[272] Of that number, 235 operated with annual receipts of less than $25 million, while 41 firms had annual receipts between $25 million and $49,999,999.[273] Based on this data, we conclude that approximately three-quarters of firms that operate in this industry are small.

76. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks).[274] The SBA has established a size standard for this industry, which is annual receipts of $15 million or less.[275] The 2012

[266] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621498 "All Other Outpatient Care Centers", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621498&search=2012+NAICS+Search&search=2012.

[267] 13 CFR § 121.201 NAICS Code 621498.

[268] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621498, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621498.

[269] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $20.5 million or less.

[270] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621991 "Blood and Organ Banks", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621991&search=2012+NAICS+Search&search=2012.

[271] 13 CFR § 121.201 NAICS Code 621991.

[272] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621991, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621991.

[273] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $32.5 million or less.

[274] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621999 "All Other Miscellaneous Ambulatory Health Care Services", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621999&search=2012+NAICS+Search&search=2012.

[275] 13 CFR § 121.201 NAICS Code 621999.

U.S. Economic Census indicates that 2,429 firms operated in this industry throughout the entire year.[276] Of that number, 2,318 had annual receipts of less than $10 million, while 56 firms had annual receipts between $10 million and $24,999,999.[277] Based on this data, we conclude that a majority of the firms in this industry are small.

77. *Medical Laboratories.* This U.S. industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner.[278] The SBA has established a size standard for this industry, which is annual receipts of $32.5 million or less.[279] The 2012 U.S. Economic Census indicates that 2,599 firms operated in this industry throughout the entire year.[280] Of this number, 2,465 had annual receipts of less than $25 million, while 60 firms had annual receipts between $25 million and $49,999,999.[281] Based on this data, we conclude that a majority of firms that operate in this industry are small.

78. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner.[282] The SBA has established size standard for this industry, which is annual receipts of $15 million or less.[283] The 2012 U.S. Economic Census indicates that 4,209 firms operated in this industry throughout the entire year.[284] Of that number, 3,876 firms had annual receipts of less than $10 million, while 228 firms had annual receipts between $10 million and $24,999,999.[285] Based on this data, we conclude that a majority of firms that operate in this industry are small.

79. *Home Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational

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[276] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621999, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621999.

[277] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $15 million or less.

[278] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621511 "Medical Laboratories", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621511&search=2012+NAICS+Search&search=2012.

[279] 13 CFR § 121.201 NAICS Code 621511.

[280] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621511, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621511.

[281] *Id*. The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $32.5 million or less.

[282] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621512 "Diagnostic Imaging Centers", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621512&search=2012+NAICS+Search&search=2012.

[283] 13 CFR § 121.201 NAICS Code 621512.

[284] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621512, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621512.

[285] *Id*. The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $15 million or less.

therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.[286] The SBA has established a size standard for this industry, which is annual receipts of $15 million or less.[287] The 2012 U.S. Economic Census indicates that 17,770 firms operated in this industry throughout the entire year.[288] Of that number, 16,822 had annual receipts of less than $10 million, while 590 firms had annual receipts between $10 million and $24,999,999.[289] Based on this data, we conclude that a majority of firms that operate in this industry are small.

80. *Ambulance Services.* This U.S. industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel.[290] The SBA has established a size standard for this industry, which is annual receipts of $15 million or less.[291] The 2012 U.S. Economic Census indicates that 2,984 firms operated in this industry throughout the entire year.[292] Of that number, 2,926 had annual receipts of less than $15 million, while 133 firms had annual receipts between $10 million and $24,999,999.[293] Based on this data, we conclude that a majority of firms in this industry are small.

81. *Kidney Dialysis Centers.* This U.S. industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services.[294] The SBA has established assize standard for this industry, which is annual receipts of $38.5 million or less.[295] The 2012 U.S. Economic Census indicates that 396 firms operated in this industry throughout the entire year.[296] Of that number, 379 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999[297] Based on this data, we conclude that a majority of firms in this industry are

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[286] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621610 "Home Health Care Services", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621610&search=2012+NAICS+Search&search=2012.

[287] 13 CFR § 121.201 NAICS Code 621610.

[288] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621610, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621610.

[289] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $15 million or less.

[290] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621910 "Ambulance Services", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621910&search=2012+NAICS+Search&search=2012.

[291] 13 CFR § 121.201 NAICS Code 621910.

[292] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621910, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621910.

[293] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $15 million or less.

[294] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 621492 "Kidney Dialysis Centers", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=621492&search=2012+NAICS+Search&search=2012.

[295] 13 CFR § 121.201 NAICS Code 621492.

[296] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 621492, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~621492.

[297] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $38.5 million or less.

small.

82. *General Medical and Surgical Hospitals.* This U.S. industry comprises establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. These hospitals have an organized staff of physicians and other medical staff to provide patient care services. These establishments usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services.[298] The SBA has established a size standard for this industry, which is annual receipts of $38.5 million or less.[299] The 2012 U.S. Economic Census indicates that 2,800 firms operated in this industry throughout the entire year.[300] Of that number, 877 has annual receipts of less than $25 million, while 400 firms had annual receipts between $25 million and $49,999,999.[301] Based on this data, we conclude that approximately one-quarter of firms in this industry are small.

83. *Psychiatric and Substance Abuse Hospitals.* This U.S. industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services.[302] The SBA has established a size standard for this industry, which is annual receipts of $38.5 million or less.[303] The 2012 U.S. Economic Census indicates that 404 firms operated in this industry throughout the entire year.[304] Of that number, 185 had annual receipts of less than $25 million, while 107 firms had annual receipts between $25 million and $49,999,999.[305] Based on this data, we conclude that more than one-half of the firms in this industry are small.

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[298] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 622110 "General Medical and Surgical Hospitals", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=622110&search=2012+NAICS+Search&search=2012.

[299] 13 CFR § 121.201 NAICS Code 622110.

[300] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 622110, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~622110.

[301] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $38.5 million or less.

[302] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 622210 "Psychiatric and Substance Abuse Hospitals", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=622210&search=2012+NAICS+Search&search=2012.

[303] 13 CFR § 121.201 NAICS Code 622210.

[304] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 622210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~622210.

[305] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $38.5 million or less.

84. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This U.S. industry consists of establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse). Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services.[306] The SBA has established a size standard for this industry, which is annual receipts of $38.5 million or less.[307] The 2012 U.S. Economic Census indicates that 346 firms operated in this industry throughout the entire year.[308] Of that number, 146 firms had annual receipts of less than $25 million, while 79 firms had annual receipts between $25 million and $49,999,999.[309] Based on this data, we conclude that more than one-half of the firms in this industry are small.

85. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (e.g., wars). [310] The SBA has established a size standard for this industry which is annual receipts of $32.5 million or less.[311] The 2012 U.S. Economic Census indicates that 541 firms operated in this industry throughout the entire year.[312] Of that number, 509 had annual receipts of less than $25 million, while 7 firms had annual receipts between $25 million and $49,999,999.[313] Based on this data, we conclude that a majority of firms in this industry are small.

8. Vendors and Equipment Manufacturers

86. *Vendors of Infrastructure Development or "Network Buildout."* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are "Radio and

[306] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 622310 "Specialty (Except Psychiatric and Substance Abuse) Hospitals", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=622310&search=2012+NAICS+Search&search=2012.

[307] 13 CFR § 121.201 NAICS Code 622310.

[308] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 622310, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~622310.

[309] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $38.5 million or less.

[310] *See* U.S. Census Bureau, 2012 NAICS Definitions, NAICS Code 624230 "Emergency and Other Relief Services", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=624230&search=2012+NAICS+Search&search=2012.

[311] 13 CFR § 121.201, NAICS Code 624230.

[312] U.S. Census Bureau, *2012 Economic Census of the United States,* Table EC1262SSSZ4*, Healthcare and Social Assistance: Subject Series - Estab and Firm Size: Receipts/Revenue Size of Firms for the United States*: 2012, NAICS code 624230, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/62SSSZ4//naics~624230.

[313] *Id.* The available U.S. Census data do not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $32.5 million or less.

Television Broadcasting and Wireless Communications Equipment" with a size standard of 1,250 employees or less[314] and "Other Communications Equipment Manufacturing" with a size standard of 750 employees or less."[315] U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year.[316] Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.[317] For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012 shows that 383 establishments operated for the year.[318] Of that number 379 firms operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, we conclude that the majority of Vendors of Infrastructure Development or "Network Buildout" are small.

87. *Telephone Apparatus Manufacturing*. This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."[319] The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees.[320] According to U.S. Census Bureau data for 2012, there were a total of 266 establishments in this category that operated for the entire year.[321] Of this total, 262 had employment of under 1,000, and an additional 4 had employment of 1,000 to 2,499.[322] Thus, under this size standard, the majority of firms can be considered small.

88. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and

[314] 13 CFR § 121.201, NAICS Code 334220.

[315] 13 CFR § 121.201, NAICS Code 334290.

[316] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334220, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220.

[317] *Id*.

[318] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334290, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334290.

[319] U.S. Census Bureau, 2012 NAICS Definitions, "334210 Telephone Apparatus Manufacturing"; https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.334210#.

[320] 13 CFR § 121.201, NAICS code 334210.

[321] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334210. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census data for firms or companies only gives the total number

(continued….)

television broadcast and wireless communications equipment.[323] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[324] The SBA has established a small business size standard for this industry of 1,250 employees or less.[325] U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.[326] Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.[327] Based on this data, we conclude that a majority of manufacturers in this industry are small.

89. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).[328] Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.[329] The SBA has established a size for this industry as all such firms having 750 or fewer employees.[330] U.S. Census Bureau data for 2012 show that 383 establishments operated in that year.[331] Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.[332] Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

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

90. This Notice proposes changes to the Universal Service Fund (Fund) and the four universal

(Continued from previous page)
of such entities for 2012, which was 250. *See also* https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG1//naics~334210.

[322] *Id*. An additional 4 establishments had employment of 2,500 or more.

[323] The NAICS Code for this service is 334220. 13 C.F.R 121.201. *See also* U.S. Census Bureau, 2012 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing" *https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.334220#*.

[324] *Id*.

[325] 13 CFR § 121.201, NAICS Code 334220.

[326] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334220, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220.

[327] *Id*.

[328] U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code "334290 Other Communications Equipment Manufacturing"; https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=334290&search=2017+NAICS+Search&search=2017.

[329] *Id.*

[330] 13 CFR § 121.201, NAICS code 334290.

[331] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334290, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334290.

[332] *Id.*

service support mechanisms in order to promote efficiency, fairness, and sustainability. The proposals in this NPRM are directed at enabling the Commission to meet its goals and objectives for the Fund, to preserve and advance universal service, to meet its obligation to protect against Fund waste, and to ensure that the universal service programs are funded appropriately. The NPRM seeks comment on some potential changes that could increase economic burdens on small entities, as well as some potential changes that would decrease economic burdens on small entities.

91. *Contributions.* Universal Service support is funded by ratepayers and continuing to increase Fund expenditures unchecked risks an increased burden on consumers, including small businesses. Capping the Fund at $11.42 billion overall will strike the appropriate balance between ensuring adequate funding for the universal service programs while minimizing the burdens placed on ratepayers, including small businesses, who contribute to the programs.

92. *Programmatic Changes*. We do not expect that the proposed changes will result in disruption to the programs or services provided by the programs. However, it is possible that proposed budget reduction mechanisms, if necessary, could result in prioritization schemes or budgetary cuts that could impact program participants, including small businesses.

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

93. 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.[333] We expect to consider all of these factors when we have received substantive comment from the public and potentially affected entities.

94. Largely, the proposals in the Notice, if adopted, would have no impact on or would reduce the economic impact of current regulations on small entities. Certain proposals in this Notice could have a positive economic impact on small entities; for instance, we seek comment on some changes to the budget structures of the four universal service programs in order to establish a maximum level of universal service support that can be collected. We expect that this will provide predictability to contributors and ratepayers, including small entities. In addition to proposing the budget changes to the individual USF programs, we propose an overall USF budget cap as well as reduction mechanisms to correct a scenario when disbursements exceed or are projected to exceed the proposed overall USF budget. We expect that an overall cap will help to reduce the contribution burden for all contributors, including small businesses. In the Notice, we seek comment on the burden this change would create for carriers and will factor that into our decision.

95. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Notice were designed to

[333] 5 U.S.C. § 603(c).

ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

96. None

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Universal Service Contribution Methodology*, WC Docket No. 06-122.

In my years working on communications policy, I have been tremendously focused on improving the effectiveness of our Universal Service Fund (USF) programs to bring broadband Internet to those without access. Part and parcel of that mission is to ensure the USF's sustainability for years to come, and to protect the hard-earned investments of consumers who pay for our subsidy programs. I have advocated on behalf of ratepayers to address a perennial problem of public choice: while there's never any shortage of special interest groups seeking additional spending, those who actually foot the bill are much less likely to spend time and resources to defend their own interests. Quite reasonably and appropriately, they're focused instead on their everyday, busy lives.

That is why I called on the Commission to begin this critical rulemaking. The Commission has time and again increased spending in each of the discrete sub-programs, often justifiably so. However, it has done so without the constraints of a topline budget, and in turn, without considering the effect of spending decisions for the whole USF enterprise and how to fairly and efficiently allocate scarce funds among the four programs. That is not a responsible way to run an $11 billion-plus fund, and not the way the vast majority of federal government programs—or American businesses and families, for that matter—operate.

More importantly, it's not fair to the American consumers who ultimately pay for the USF through line items on their telephone bills. At the very least, they deserve much more stability in knowing the overall amount they'll be on the hook for every month. That's especially true given the regressive nature of USF fees, and their disproportionate burden on lower- and middle-income Americans. Since the fee is generally spread among consumers on an equal and agnostic basis, low-income households pay a far greater share of their income to the USF than their high-income counterparts. And, the regressive nature of the fee is also why I believe with the core of my being we should never, ever apply it to broadband Internet access service. Doing so would effectively place a sin tax on the Internet—and thus runs totally counter to the goal of universal connectivity.

In other words, this NPRM is about protecting ratepayers and demanding more thoughtfulness on the Commission's part when it spends their money. Contrary to certain myths spread by knee-jerk opponents, this rulemaking is a first step in promoting better certainty and stability within the USF and will, in turn, help improve the viability of our broadband subsidies.

With that in mind, it seems necessary to set the record straight on several misconceptions that were peddled in the wake of the draft's circulation:

1. FACT: This NPRM initiates a dialogue and does NOT constitute a final order.

Some in Washington talk a good talk about promoting free expression and democratic dialogue. However, when it comes to considering policy ideas from my side of the political spectrum, they seem to throw those principles in the dustbin and seek to shut down debate. That is not a healthy way to determine public policy, and it is not the way I have chosen to conduct myself as a federal regulator. The bigger the marketplace of ideas the better, and, other than in a few limited circumstances, I have welcomed contrasting points of view.

Similarly, supporting this NPRM means welcoming healthy debate on how best to operate the USF. This is not a final order on adopting a budget, but a solicitation of public comment to provoke a dialogue on the way to final action. While I support the adoption of a budget as a general matter, even I am not sold on every idea contained in the draft—for example, the proposed budgetary amount itself and the proposal to combine the E-Rate and Rural Health Care budgets—but I am open to being convinced otherwise. My sincere hope is that we receive a robust record in response to the item, and I look forward to reviewing *thoughtful* comments submitted from all sides of the spectrum.

2. FACT: This NPRM's proposed budget would NOT cut funding to Universal Service.

More fundamentally, the proposals in this item would in no way, shape, or form cut funding to universal service. There is no "Hunger Games" scenario to be played among potential USF recipients and it is disingenuous to suggest otherwise. On the contrary: the proposed budget of $11.42 billion is more than $3 billion above current program disbursements and would be indexed to keep pace with inflation. That leaves plenty of wiggle room for justified spending increases, should disbursement levels need to rise in the future. And, according to projections cited in the item, a substantial delta between the budget and disbursements should remain for many years to come.

Moreover, should the need for a higher cap arise in the future, the Commission would in no way be precluded from raising that threshold. Doing so would merely require a Commission-level vote. However, such a decision would require a thoughtful notice and comment process and would be much more transparent and accountable than the status quo.

3. FACT: This NPRM is NOT a backdoor way to establish a budget on Lifeline.

Certain special interest groups have claimed—incorrectly—that establishing an overall budget is a roundabout way to cut funding to the Lifeline program for low-income Americans. After all, Lifeline is the only one of the USF sub-programs that lacks a self-enforcing cap. Even apart from the fact that the proposed budget would in no way cut funding to any of the programs (see point 2 above), Lifeline itself is significantly under its own "soft cap" limit, to the tune of more than $1 billion. While administration of the Lifeline program has been subject to criticism recently, those issues are in no way attributable to a budgetary shortfall.

As I have repeatedly made clear, I am more than willing to establish a cap on Lifeline directly, and without the USF cap proceeding as a surreptitious vehicle. Further, while I support hard caps on the sub-programs as a matter of fiscal responsibility and predictability, having an overall USF budget serves somewhat of a different purpose. It requires the Commission to examine the USF at a more macro level and encourages debate about priorities and implications for the fund as a whole before more spending is authorized. It would also encourage the Commission to focus on eliminating inefficiencies, fraud, and duplicative spending to a much greater extent.

I thank the Chairman for circulating this critical and long-awaited rulemaking. Establishing a cap will go a long way in supporting a predictable, efficient, and responsible USF, and I welcome having a reasoned and thorough record to help guide final action in the near future.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
DISSENTING

Re: *Universal Service Contribution Methodology*, WC Docket No. 06-122.

This is a rulemaking that proposes to limit universal service efforts at the Federal Communications Commission. It is fundamentally inconsistent with this agency's high-minded rhetoric about closing the digital divide. It is also at odds with our most basic statutory duty to promote and advance universal service. That's because it suggests a course that could cut off broadband in rural areas, limit high-speed internet access in rural classrooms, shorten the reach of telehealth, and foreclose opportunity for those who need it most. Worse, it proposes unleashing a fight for support between connecting kids in schools and hooking up hospitals for telemedicine.

I do not support an approach that fosters the universal service hunger games. I dissent.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS
DISSENTING

Re: *Universal Service Contribution Methodology,* WC Docket No. 06-122.

The FCC's Universal Service programs are among the most significant "tools in the toolkit" possessed by the federal government to ensure that all Americans have access to voice and broadband services comparable to their fellow citizens. Without these communications services, we risk leaving behind millions of Americans as our country transitions to a fully connected society. The Universal Service Fund helps to address internet inequality by enabling service providers to build out or improve their broadband offerings in the areas that need it most. It also ensures that schools throughout the country have high-speed broadband connections so that students everywhere can access digital content and educational methods enabled by broadband. Universal Service also provides, through the Lifeline program, a critical connection for our most vulnerable—to emergency services in times of need, to jobs, and to family. Universal Service also helps rural communities realize the potential of telemedicine. Considering both the success of these programs and the Commission's statutory mandate from Congress, a cap on the Universal Service program's overall budget is not the right approach. That's why I dissent here.

Congress charged the FCC to base its polices for the preservation and advancement of universal service on several principles including the following: (1) that "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services … that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas" and (2) that "elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services…"[334] Congress also directed the FCC to "enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services" for schools and libraries, and mandated that "a telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State … to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State."[335]

The FCC carried out these and other similar Congressional directives by creating the four Universal Service programs – each meeting a separate need and working toward distinct goals. The Chairman's proposal to arbitrarily cap all of the Universal Service programs flies in the face of Congress's direction to the FCC and of all of the FCC's efforts to use these programs as tools to provide comparable access to communications services. The proposal would pit deserving beneficiaries—anchor institutions, students, patients, and Americans who lack broadband— against one another in a fight for Universal Service funds.

This would be a terrible result. It would threaten connectivity for the nation's students. It would restrict the ability of the Rural Health Care program to enable rural clinics to deliver services in areas that have no other options for patients to get health care services in their communities. It would impinge on the reach of the Commission's Lifeline program, the only Federal program designed to address the

[334] *See* 47 USC § 254(b)(3); 47 USC §254(b)(6).

[335] *See* 47 U.S.C. § 254(h)(2)(A); 47 U.S.C. § 254(h)(1)(A), *see also* 47 U.S.C § 254(h)(1)(B).

affordability of communications services for low-income consumers. And, it would curtail the Commission's ability to address the problem of internet inequality.

In particular, the NPRM proposes to combine the E-Rate and the Rural Health Care programs under one cap. That raises an alarm for me, and would have the effect of immediately lowering one program's budget if the other is oversubscribed.[336] I believe that kind of a budget cut runs counter to the FCC's statutory obligations.

Furthermore, the cap is arbitrary because it has no relation to the actual nature of the internet inequality problem in this country. How can we cap the amount of money needed to support broadband when we don't even know the number and locations of the Americans that still need to be connected? As I have outlined in another statement, the FCC's data troubles raise serious questions about whether the agency understands the problem it seeks to solve. Instead of imposing an arbitrary cap, the FCC should be improving its data collection and analysis capabilities so it can understand the true nature of the problem and measure its progress. In short, the FCC should be focused on mapping not capping.

For all of these reasons, I dissent.

While I disagree with the approach in this NPRM, I certainly appreciate the efforts of the WCB and OEA staff who prepared this item.

[336] *See e.g. Promoting Telehealth in Rural America*, Report and Order, 33 FCC Rcd. at 6574. (raising the annual Rural Health Care Program Funding Cap from $400 million to $571 million).