



# PUBLIC NOTICE

Federal Communications Commission  
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## WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROCEDURES RELATING TO AREAS ELIGIBLE FOR FUNDING AND ELECTION TO MAKE A STATEWIDE COMMITMENT IN PHASE II OF THE CONNECT AMERICA FUND

WC Docket No. 10-90

**Comment Date:** [30 days after Federal Register publication]  
**Reply Comment Date:** [45 days after Federal Register publication]

### I. INTRODUCTION

1. The Commission has delegated to the Wireline Competition Bureau (Bureau) the task of developing a forward-looking cost model to determine support levels to be offered to price cap carriers in Phase II of the Connect America Fund. The Bureau recently announced the availability of version one of the Connect America Cost Model, which provides the ability to calculate costs using a variety of different inputs and assumptions.<sup>1</sup>

2. The Bureau expects to solicit additional public comment on the cost model through its ongoing Virtual Workshop, which focuses on technical model design and input issues, and public notices, which will focus on other issues relating to implementation of Phase II, before finalizing the Connect America Cost Model.

3. In this Public Notice, the Bureau proposes procedures to provide an opportunity for parties to challenge whether census blocks that are identified as eligible to receive Phase II support are in fact unserved by an unsubsidized competitor. We also seek comment on procedures relating to the election of price cap carriers to accept Phase II support in exchange for making a statewide commitment.

### II. BACKGROUND

4. On November 18, 2011, the Commission released the *USF/ICC Transformation Order and FNPRM*, which comprehensively reforms and modernizes the universal service and intercarrier compensation systems. As part of the reform, the Commission adopted a framework for providing ongoing support to areas served by price cap carriers, including areas lacking broadband-capable infrastructure, known as Phase II of the Connect America Fund. Specifically, the Commission will

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<sup>1</sup> *Wireline Competition Bureau Announces Availability of Version One of the Connect America Fund Phase II Cost Model*, WC Docket Nos. 10-90 and 05-337, Public Notice, DA 12-2011 (Wireline Comp. Bur. Dec. 11, 2012).

provide ongoing support to these areas for a five-year period through “a combination of a forward-looking cost model and competitive bidding.”<sup>2</sup>

5. Since then, the Bureau released the *Request for Models Public Notice*, inviting interested parties to submit proposed cost models.<sup>3</sup> In response, parties submitted two separate models into the record.<sup>4</sup> In June 2012, the Bureau sought comment on these models as well as “on a number of threshold decisions regarding the design of and data inputs to the forward-looking cost model.”<sup>5</sup>

6. The Bureau hosted an in-person workshop in September 2012 to discuss the design and mechanics of the cost models in the record and commenced a virtual workshop in October, soliciting input on a variety of topics related to the development and adoption of the cost model.<sup>6</sup> On December 10, 2012, the Bureau sought comment on whether additional functionalities should be added to the Connect America Cost Model platform.<sup>7</sup> We will provide additional opportunity for public comment on the model inputs prior to adopting the final Connect America Cost Model.

7. The Commission has implemented or is seeking comment on potential processes to determine areas eligible for support in other, related proceedings. In particular, earlier this year the Wireless Telecommunications Bureau provided an opportunity for public input before finalizing the

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<sup>2</sup> See *Connect America Fund*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673, para. 23 (2011) (*USF/ICC Transformation Order or Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

<sup>3</sup> *Request for Connect America Fund Cost Models*, Public Notice, WC Docket Nos. 10-90 and 05-337, 26 FCC Rcd 16836 (Wireline Comp. Bur. 2011) (*Request for Models PN*).

<sup>4</sup> Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Federal Communications Commission, filed Feb. 13, 2012 (attaching updated documentation of CQBAT model) (CQBAT letter). This submission updated the ABC Coalition’s prior proposal for a forward-looking model, which had been submitted prior to the release of the *USF/ICC Transformation Order*. Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. 1 at 13 (filed July 29, 2011) (ABC Plan). The ABC Coalition model was submitted pursuant to a protective order adopted by the Bureau. See *Connect America Fund, High-Cost Universal Service Support*, WC Docket Nos. 10-90 and 05-337, Second Supplemental Protective Order, 27 FCC Rcd 1503 (2012). Alaska Communications Systems Group, Inc. also submitted a model that estimates the cost of serving Alaska only. See *Comments of Alaska Communications Systems Group, Inc.*, WC Docket Nos. 10-90 and 05-337 (filed Feb. 1, 2012). This model was submitted pursuant to a protective order adopted by the Bureau. *Connect America Fund, High-Cost Universal Service Support*, WC Docket Nos. 10-90 and 05-337, Second Protective Order, 27 FCC Rcd 1494, 1494 n.2 (Wireline Comp. Bur. 2012).

<sup>5</sup> *Wireline Competition Bureau Seeks Comment on Model Design and Data Inputs for Phase II of the Connect America Fund*, WC Docket Nos. 10-90 and 05-337, Public Notice, 27 FCC Rcd 6147 (Wireline Comp. Bur. 2012).

<sup>6</sup> *Wireline Competition Bureau Announces Connect America Phase II Cost Model Workshop*, WC Docket Nos. 10-90 and 05-337, Public Notice, 27 FCC Rcd. 9882 (Wireline Comp. Bur. 2012); *Wireline Competition Bureau Announces Commencement of Connect America Phase II Cost Model Virtual Workshop*, WC Docket Nos. 10-90 and 05-337, Public Notice, 27 FCC Rcd 11977 (Wireline Comp. Bur. 2012).

<sup>7</sup> *Wireline Competition Bureau Announces Availability of Version One of the Connect America Fund Phase II Cost Model*; see also <http://www.fcc.gov/blog/connect-america-cost-model-platform>.

list of eligible census blocks in the Mobility Fund Phase I auction proceeding.<sup>8</sup> The Commission also recently sought comment on a challenge process for potential future rounds of Connect America Fund Phase I.<sup>9</sup>

### III. DISCUSSION

#### A. Procedures for Challenging Whether an Area is Served by an Unsubsidized Competitor

8. The Commission directed the Bureau, after the cost model is adopted, to “publish a list of all eligible census blocks” (specifically, those census blocks in price cap territories below the extremely high-cost threshold but above the funding threshold) and provide an opportunity for parties to “challenge the determination of whether or not areas are unserved by an unsubsidized competitor.”<sup>10</sup> We propose to utilize the following procedures to allow interested parties to make such challenges when we adopt a final model and seek comment on these proposed procedures.

9. The Commission concluded that “it would be appropriate to exclude any area served by an unsubsidized competitor,” and it delegated to the Bureau “the task of implementing the specific requirements of this rule.”<sup>11</sup> Consistent with the directive in the *USF/ICC Transformation Order*, we propose to publish a list of eligible census blocks classified by the cost model as unserved by an unsubsidized competitor offering service that meets the broadband performance obligations for Phase II. For purposes of this determination, the Commission has defined an unsubsidized competitor as one that is offering terrestrial fixed broadband with an advertised speed of 4 Mbps downstream and 1 Mbps upstream.<sup>12</sup> Consistent with the approach adopted by the Commission for Connect America Phase I, we propose to use 3 Mbps downstream and 768 kbps upstream as a proxy for 4 Mbps downstream and 1 Mbps upstream in developing this initial list because that information is readily available from other data sources.<sup>13</sup> Likewise, for administrative simplicity, we propose

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<sup>8</sup> See *Mobility Phase I Auction Scheduled for September 27, 2012 Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725 (Wireless Tel. Bur., Wireline Comp. Bur. 2012).

<sup>9</sup> See *Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, 27 FCC Rcd 14566 (2012); see also *Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support*, WC Docket No. 10-90, Public Notice, DA 12-1961 (Wireline Comp. Bur. Dec. 5, 2012) (*Phase I Challenge Process PN*).

<sup>10</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, 17729, paras. 103, 170.

<sup>11</sup> *Id.* at 17729, para. 171. The Commission noted that the model scenarios submitted by the ABC Plan proponents excluded areas already served by a cable company offering broadband. It also acknowledged that other commenters suggested that areas with reliable 4G wireless service and areas that received American Recovery and Reinvestment Act stimulus funding from RUS or NTIA to build broadband facilities could be excluded.

<sup>12</sup> *Id.* at 17701, para. 103. There are currently petitions for reconsideration pending regarding the definition of unsubsidized competitor. See, e.g., *Petition for Partial Reconsideration of the Wireless Internet Service Providers*, WC Docket No. 10-90 et al. (filed Dec. 29, 2011); *NTCH Petition for Reconsideration*, WC Docket No. 10-90 et al. (filed Dec. 29, 2011). This Public Notice does not prejudge the disposition of those petitions.

<sup>13</sup> This is consistent with the Commission’s prior approach in the *USF/ICC Transformation Order*, which recognized that data on broadband availability at 3 Mbps/768 kbps collected for the National Broadband Map and through the Commission’s Form 477 process is an acceptable proxy for determining whether an area is served by 4 Mbps/1 Mbps. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103 n.168.

that to the extent a party is challenging the classification of a particular census block, it may present evidence demonstrating the block in question is served by service providing 3 Mbps downstream and 768 kbps upstream.

10. We expect the final Connect America Cost Model we adopt will use the National Broadband Map reflecting State Broadband Initiative (SBI) data as of June 2012, potentially supplemented with other data sources.<sup>14</sup> Once we publish the relevant list of unserved census blocks with costs between the extremely high-cost threshold and the funding threshold shown in the model, we propose that interested parties would then have an opportunity to challenge that list. Specifically, challengers would submit revisions and other potential corrections to the list of eligible census blocks where coverage by unsubsidized competitors is either overstated (i.e., census blocks are listed as served where they are in fact unserved) or understated (i.e., census blocks are listed as unserved when they are in fact served). We propose that parties contending the Bureau's original classification as served or unserved is accurate would have an opportunity to submit evidence to rebut the challenge.

11. Commenters seeking to challenge the eligibility of a particular area for funding would be required to list specific census blocks that are inaccurately classified as served or unserved by an unsubsidized competitor, along with a brief statement and supporting evidence demonstrating that those census blocks are inaccurately reported. We propose not to process any challenge that lacks some evidentiary showing regarding the census block in question; a challenge that merely asserts the area is or is not served would not be sufficient. Challenges to a census block's eligibility may be based on any or all of the Commission's broadband performance metrics – speed, latency, and/or capacity (i.e., minimum usage allowance).<sup>15</sup> Challenges may also be based on non-performance metrics that affect the availability of broadband in a census block. For example, if the provider of broadband in that census block only offers service to business customers and not residential customers, the status of that block as served may be challenged.

12. Consistent with our proposal above, we propose that to be deemed served, a census block must have access to broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream.<sup>16</sup> Proposed examples of potential types of probative evidence regarding the availability of broadband service meeting the speed requirements established by the Commission include, but are not limited to, more recent SBI data than that used in version of the model adopted by the Bureau; maps or printouts of websites indicating coverage for a particular area accompanied by an officer

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<sup>14</sup> Other data could include information provided in response to the public notice seeking updates for a potential future round of Phase I. *See Phase I Challenge Process PN*.

<sup>15</sup> We note that an unsubsidized competitor not only must meet the Commission's broadband speed requirements but also must meet defined capacity and latency requirements. Phase II support is excluded for "areas where an unsubsidized competitor offers broadband service *that meets the broadband performance requirements . . .*" *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 170 (emphasis added). The broadband performance requirements are listed in Section VI.B of the *USF/ICC Transformation Order* and include speed, latency, and capacity. *See id.* at 17696-99, paras. 92-100. Thus, to demonstrate that a census block marked as unserved is in fact served, a challenger would need to show *all* three performance metrics were met – speed, latency, *and* capacity. However, to demonstrate that a census block is unserved, a challenger need only show that *any* of the three is not met – speed, latency, *or* capacity.

<sup>16</sup> As discussed above, 3 Mbps/768 kbps is used as a proxy for 4 Mbps/1 Mbps. *See supra para. 9. See also USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103 n.168.

certification that such materials reflect current conditions;<sup>17</sup> printouts of billing information for customers within the particular census block, with identifying customer information appropriately masked; engineering analyses or drive tests; explanations of methodologies for determining coverage; and certifications by one or more individuals as to the veracity of the material provided.<sup>18</sup> What other information regarding the speed of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map?

13. The Commission specified in the *USF/ICC Transformation Order* that latency should be sufficiently low as to enable real-time applications, such as Voice over Internet Protocol (VoIP).<sup>19</sup> Proposed examples of potential types of probative evidence regarding latency include, but are not limited to, documentation that a provider is actually offering voice service to customers in the relevant area, such as a printout of a website showing voice service availability at a particular address in the census block accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to voice from that provider. What other information regarding the latency of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map?

14. The Commission delegated to the Wireline Competition Bureau and Wireless Telecommunications Bureau the task of adopting capacity or “minimum usage allowance” requirements for recipients of Phase II support.<sup>20</sup> Proposed examples of potential types of probative evidence regarding minimum usage include, but are not limited to, a printout of a website showing market offerings meeting the minimum usage requirement accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to a service offering meeting the minimum usage allowance requirement. What other information regarding the capacity of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map? Should we require one or more of these evidentiary showings for a challenge to be deemed complete as filed?

15. We propose that all certifications regarding evidence supporting or opposing a challenge be signed by an individual with relevant knowledge (such as officer of the company making or opposing the challenge, or a representative of the state mapping agency) certifying that the information presented is accurate to the best of his or her knowledge.

16. To assist in the development of a more complete record, we also seek comment on how to ensure that potentially interested parties are aware of the opportunity for public input. For instance, should a purported unsubsidized competitor challenging the classification of a block as unserved (and therefore eligible for funding) be required to serve a copy of its challenge on the price cap carrier? If a price cap carrier believes a particular census block should be on the list of blocks

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<sup>17</sup> Such a situation could occur, for instance, if an unsubsidized competitor completed deployment to a particular census block after the last collection of SBI data. The officer of the unsubsidized competitor would certify that service is now available in the block shown on the map or website printout.

<sup>18</sup> See, e.g., *Mobility Phase I Auction Scheduled for September 27, 2012 Notice and Filing Requirements and Other Procedures for Auction 901*, 27 FCC Rcd at 4734-35, para. 20.

<sup>19</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17698, para. 96.

<sup>20</sup> *Id.* at 17799, para. 99.

eligible for funding (because it is not served), should it be required to serve a copy of its challenge by overnight delivery on any entity shown as serving the block on the National Broadband Map?

17. We intend to conduct this challenge process in an expeditious fashion. We propose that after the release of the list of census blocks, parties would have 45 days to file challenges to the list. Parties wishing to rebut such challenges would have an additional 20 days to submit evidence supporting their contentions. We seek comment on whether this proposed time frame adequately serves our goal of providing a meaningful opportunity for challenge, while concluding this challenge process in a reasonable timeframe. We propose that all evidence regarding the status of a particular census block must be filed within this timeframe; any evidence filed after these dates will be deemed untimely. Strict adherence to these deadlines is necessary to provide an adequate opportunity for the party that contends the classification as served or unserved is accurate to respond to all evidence submitted by the challenger within the reply comment timeframe, and in order for this administrative process to be completed expeditiously.

18. At the close of the challenge timeframe, we propose that where the Bureau finds that it is more likely than not that a census block is inaccurately classified as served or unserved, we would modify the classification of that census block for purposes of finalizing the census blocks that will be eligible for a price cap carrier statewide commitment under the Connect America Phase II program. In the event that both the challenger and the opponent provide credible evidence regarding the status of a particular block, we propose that the default determination will be however the block is classified on the National Broadband Map at the time the challenge is resolved. We recognize the practical difficulties that may ensue in situations where one party says service exists and the other party says service does not exist. Because it may be difficult and expensive for the party contending that service does not exist to prove a negative, we propose that the most expedient solution in such situations is to rely upon the most current available map data.

19. We propose that, in making its determinations, the Bureau would consider whether the challenger took steps to bring the alleged errors in the National Broadband Map to the attention of the relevant state mapping authority and the outcome of any such efforts. It is possible that the December 2012 SBI data may become available shortly before or after the forward looking cost model is adopted, and therefore challengers may wish to present evidence of the more recent classification on the National Broadband Map in their challenges. If December 2012 SBI data is available at the time the Bureau resolves these challenges, we propose to rely upon the December 2012 classification.

20. While the Bureau will rely on updates to the available SBI data, we propose to focus on evidence regarding current broadband availability at the time we resolve the challenge, and not on announced market expansion plans that may occur at some future date.<sup>21</sup> We note that announced deployment plans may change for business and other reasons, and if we were to exclude a census block area based on announced plans to extend service to that block, that could provide an opportunity for potential competitors to engage in strategic behavior to eliminate support for a particular census block, without an assurance that the competitor will actually serve the block at a future date.

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<sup>21</sup> We note that under the requirements for the collection of SBI data, broadband service is deemed “‘available’ to an end user at an address if a broadband service provider does, or could, within a typical service interval (7 to 10 business days) without an extraordinary commitment of resources” provision service at the requisite speed. Broadband Data Improvement Act Notice of Funds Available, 74 Fed. Reg. 32545, 32548 (July 8, 2009).

21. We also propose that the Bureau only include on the preliminary list of blocks eligible for funding those census blocks that are completely unserved. We further propose to treat partially served census blocks as served and therefore not eligible for funding in Phase II. We anticipate that entertaining challenges with respect to potentially many thousands of individual census blocks could be a significant undertaking by itself, and we are concerned that the administrative burden of permitting challenges at the sub-census block level would outweigh the potential benefits. We therefore propose to conduct the challenge process at the census block level. To the extent commenters believe that we should entertain sub-census block challenges, they should describe with specificity how their proposed process would work, and in particular how we would ensure compliance with build out requirements in partially served census blocks.

22. We seek comment on all these proposals and on any alternatives. If commenters believe different procedures would better serve the Commission's goal of targeting support to areas without unsubsidized competitors, they should provide a detailed description of their preferred alternative. We welcome suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

#### **B. Procedures for Implementing the Price Cap Carrier Election to Make a Statewide Commitment**

23. We propose that after reviewing any public comment, the Bureau will publish a revised list of census blocks and a revised list of support amounts associated with each eligible area that will be offered to price cap carriers. We seek comment on whether the election period should be 90 days from the date of release of the finalized list, which would be the same as the time period provided to price cap carriers for electing to accept incremental support for Connect America Phase I. In the alternative, should the time period for price cap carriers to elect to make a statewide commitment in Phase II be longer, such as 120 days, due to the complexity of the decisions individual carriers will need to make? We also seek comment on requiring the submissions either electing or declining support to be submitted on a confidential basis prior to the deadline for election. Should carriers be allowed or required to make confidential submissions? In the event that such submissions were afforded confidentiality, we propose that the Bureau would announce all statewide elections on a single date shortly after the close of the election period.

24. We propose that a carrier electing to accept the statewide commitment would submit a letter, signed by an officer of the company, by the deadline specifying that it agrees to meet the Commission's requirements in exchange for receiving support in amounts set forth in the final Bureau public notice. To the extent a letter of credit or other form of security is required to ensure compliance with these obligations, we propose to require its submission within ten days of exercising the statewide commitment.

25. We seek comment on what information carriers should be required to submit along with their acceptance notices. Should such carriers be required to specify the technology or combination of technologies they intend to deploy in a particular state, at the wire center or census block level? Should carriers also be required to provide information such as geocoded latitude and longitude location information, along with census block and wire center information, for the specific locations where they intend to provide service meeting the 6 Mbps downstream/1.5 Mbps upstream requirement, as determined by the Bureau? Should carriers be required at the time of acceptance to submit a preliminary plan showing the census blocks and/or wire centers, and associated number of

locations, where they anticipate meeting the third year 85 percent build-out milestone?<sup>22</sup> What other information should be required in the initial acceptance notices in order to ensure the Commission has the tools it needs to monitor compliance with performance obligations? Should the Commission afford confidential treatment to any of the information required to be submitted after the Bureau announces the acceptance by carriers of funding on a statewide level?

26. We propose that a carrier declining to accept a statewide commitment in a particular state would file a letter by the deadline specifying that it is declining funding. Alternatively, a carrier failing to file a letter by the deadline could be deemed as having declined funding.

27. We seek comment on all these proposals and on any alternatives. To the extent commenters believe that other procedures would better serve the Commission's goals, they should provide a detailed description of their proposal for the statewide commitment process. We welcome suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

#### **IV. PROCEDURAL MATTERS**

##### **Initial Regulatory Flexibility Act Analysis**

28. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>23</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Public Notice. The IRFA is attached to this Public Notice as an appendix. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided at the beginning of this Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>24</sup>

##### **Initial Paperwork Reduction Act of 1995 Analysis**

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

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<sup>22</sup> Carriers must deploy to all locations within five years – at the three year mark, they must have deployed to 85 percent of locations. *USF/ICC Transformation Order*, 26 FCC Rcd at 17726-27, paras. 160-63.

<sup>23</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

<sup>24</sup> See 5 U.S.C. § 603(a). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the Federal Register. *Id.*

## Ex Parte Presentations

30. Permit-But-Disclose. The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>25</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

## Filing Requirements

31. Comments and Replies. 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: <http://fjallfoss.fcc.gov/ecfs2/>.
- 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 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand

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<sup>25</sup> 47 C.F.R. §§ 1.1200 *et seq.*

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 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

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

33. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS.<sup>26</sup> These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12<sup>th</sup> Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Additional Information. For additional information on this proceeding, contact Ryan Yates of the Wireline Competition Bureau, [ryan.yates@fcc.gov](mailto:ryan.yates@fcc.gov) (202) 418-0886.

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<sup>26</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

## APPENDIX

### Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Public Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Public Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

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

2. The Public Notice seeks comment on issues related to the implementation of Phase II of Connect America. As discussed in the *USF/ICC Transformation Order*, the rapid and efficient deployment of broadband is crucial for our nation's growth.<sup>4</sup> The proposals contained in this public notice will help to achieve the Commission's goal of making broadband accessible to all Americans.

3. The Bureau is currently in the process of developing a cost model for Phase II of Connect America.<sup>5</sup> The Commission directed the Bureau to publish a list of census blocks that would be eligible for support under the cost model, and to provide an opportunity for parties to make challenges to that list.<sup>6</sup> This Public Notice seeks comment on how to conduct such a challenge process and what data should be used in that process.<sup>7</sup> The Bureau plans to publish a list of census blocks that are within the cost model's funding threshold but are unserved by broadband with speeds of 3 Mbps downstream and 768 kbps upstream.<sup>8</sup> Parties could then submit comments challenging the accuracy of that list.<sup>9</sup>

4. The Public Notice proposes that parties could make challenges based on the fact that a purported unsubsidized competitor is or is not meeting the broadband performance requirements for

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, 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).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 3.

<sup>5</sup> See attached *Public Notice* paras. 4-6.

<sup>6</sup> See *id.* para. 8.

<sup>7</sup> See *id.* para. 10.

<sup>8</sup> See *id.* paras. 9-10.

<sup>9</sup> See *id.* para. 10.

speed, latency, or capacity.<sup>10</sup> The Public Notice also suggests various forms of evidence that could be submitted to support these contentions.<sup>11</sup> Assertions that are offered without supporting evidence would not be considered.<sup>12</sup> Where the Bureau finds it more likely than not that a census block is inaccurately classified as served or unserved, that census block's status would be altered accordingly for the purposes of Phase II eligibility.<sup>13</sup>

5. Under the system proposed in the Public Notice, parties challenging the eligibility of a particular census block would be required to serve a copy of their challenge on the entity purportedly serving that block.<sup>14</sup> That entity would then have an opportunity to respond and provide evidence rebutting that challenge.<sup>15</sup> In the event that both the challenger and the respondent provide credible information supporting their claims, the census block's status would be determined based on its current status on the most recent version of National Broadband Map available at the time the list of eligible areas is finalized.<sup>16</sup>

6. The Public Notice also sets limits on the types of challenges considered. First, only wholly unserved census blocks would be eligible for Phase II support.<sup>17</sup> Therefore, under the proposed system, sub-census block challenges would not be considered.<sup>18</sup> Second, challenges and rebuttals must be based on current broadband availability, not announced deployment plans.<sup>19</sup>

7. In addition to seeking comment on issues related to the Phase II challenge process, the Public Notice also seeks comment on procedures for implementing the process of price cap carriers' election to receive support in exchange for a commitment to serve all eligible areas within a state.<sup>20</sup> Comment is sought on what time period should be used in this process.<sup>21</sup> The Public Notice also seeks comment on what information a carrier should be required to submit when accepting a statewide commitment.<sup>22</sup>

## **B. Legal Basis**

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<sup>10</sup> *See id.* paras. 10-11.

<sup>11</sup> *See id.* paras. 12-15.

<sup>12</sup> *See id.* para. 11.

<sup>13</sup> *See id.* para. 18.

<sup>14</sup> *See id.* para. 16.

<sup>15</sup> *See id.* para. 10.

<sup>16</sup> *See id.* para. 18.

<sup>17</sup> *See id.* para. 21.

<sup>18</sup> *See id.*

<sup>19</sup> *See id.* para. 20.

<sup>20</sup> *See id.* paras. 23-27.

<sup>21</sup> *See id.* para. 23.

<sup>22</sup> *See id.* para. 25.

8. The legal basis for any action that may be taken pursuant to the Public Notice is contained in sections 1, 4(i), 4(j), 214, and 218, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996.

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

9. 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.<sup>23</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>24</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>25</sup> A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>26</sup>

10. **Small Businesses.** Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>27</sup>

11. **Wired Telecommunications Carriers.** 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.<sup>28</sup> According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.<sup>29</sup> Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.<sup>30</sup> Thus, under this size standard, the majority of firms can be considered small.

12. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. 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.<sup>31</sup> According to

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<sup>23</sup> See 5 U.S.C. § 603(b)(3).

<sup>24</sup> See 5 U.S.C. § 601(6).

<sup>25</sup> 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.”

<sup>26</sup> See 15 U.S.C. § 632.

<sup>27</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://www.sba.gov/advocacy/7495/29581> (last visited Nov. 19, 2012).

<sup>28</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>29</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

<sup>30</sup> See *id.*

<sup>31</sup> 13 C.F.R. § 121.201, NAICS code 517110.

Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>32</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>33</sup> Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Public Notice.

**13. Incumbent Local Exchange Carriers (incumbent LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. 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.<sup>34</sup> According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>35</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>36</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Public Notice.

14. 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.”<sup>37</sup> 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.<sup>38</sup> 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.

**15. 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.<sup>39</sup> According to Commission data, 1,442 carriers reported that they were engaged

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<sup>32</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>33</sup> See *id.*

<sup>34</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>35</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>36</sup> See *id.*

<sup>37</sup> 5 U.S.C. § 601(3).

<sup>38</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (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.” See 15 U.S.C. § 632(a); see also 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

<sup>39</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

in the provision of either competitive local exchange services or competitive access provider services.<sup>40</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>41</sup> 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.<sup>42</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>43</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>44</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Public Notice.

**16. Wireless Telecommunications Carriers (except Satellite).** Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>45</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.<sup>46</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>47</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>48</sup> Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more.<sup>49</sup> Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>50</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>51</sup> Consequently, the Commission

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<sup>40</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>46</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”, *available at* [http://www.census.gov/eos/www/naics/2002NAICS/2002\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2002NAICS/2002_Definition_File.pdf); U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”, *available at* [http://www.census.gov/eos/www/naics/2002NAICS/2002\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2002NAICS/2002_Definition_File.pdf).

<sup>47</sup> 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>48</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>49</sup> *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 “100 employees or more.”

<sup>50</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>51</sup> See *id.*

estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

**17. Broadband Personal Communications Service.** The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>52</sup> For Block F, an additional classification 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.<sup>53</sup> These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.<sup>54</sup> No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.<sup>55</sup> In 1999, the Commission re-auctioned 347 C, E, and F Block licenses.<sup>56</sup> There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35.<sup>57</sup> Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.<sup>58</sup> Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction

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<sup>52</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(1).

<sup>53</sup> See generally *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824 (1996); see also 47 C.F.R. § 24.720(b)(2).

<sup>54</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

<sup>55</sup> See FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997).

<sup>56</sup> See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (Wireless Tel. Bur. 1999).

<sup>57</sup> See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (Wireless Tel. Bur. 2001).

<sup>58</sup> See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (Wireless Tel. Bur. 2005).

71.<sup>59</sup> Of the 14 winning bidders, six were designated entities.<sup>60</sup> In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.<sup>61</sup>

**18. Fixed Microwave Services.** Fixed microwave services include common carrier,<sup>62</sup> private operational-fixed,<sup>63</sup> and broadcast auxiliary radio services.<sup>64</sup> At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.<sup>65</sup> 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 22,015 common carrier fixed licensees and up to 61,670 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 includes some large entities.

**19. Satellite Telecommunications.** Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million.<sup>66</sup> The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under the

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<sup>59</sup> See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

<sup>60</sup> *Id.*

<sup>61</sup> See *Auction of AWS-1 and Broadband PCS Licenses Rescheduled For August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78*, Public Notice, 23 FCC Rcd 7496 (2008) (AWS-1 and Broadband PCS Procedures Public Notice).

<sup>62</sup> See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

<sup>63</sup> Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

<sup>64</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. This service is 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 television pickups, which relay signals from a remote location back to the studio.

<sup>65</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>66</sup> See 13 C.F.R. § 121.201, NAICS code 517410.

“Satellite Telecommunications” category, a business is considered small if it had \$15 million or less in average annual receipts.<sup>67</sup> Under the “Other Telecommunications” category, a business is considered small if it had \$25 million or less in average annual receipts.<sup>68</sup>

20. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>69</sup> For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year.<sup>70</sup> Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.<sup>71</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Public Notice.

21. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.”<sup>72</sup> 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; or . . . providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections.”<sup>73</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>74</sup> Of this total, 2,346 firms had annual receipts of under \$25 million.<sup>75</sup> Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

**22. Cable and Other Program Distribution.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

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<sup>67</sup> *Id.*

<sup>68</sup> *See* 13 C.F.R. § 121.201, NAICS code 517919.

<sup>69</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications”, *available at* [http://www.census.gov/eos/www/naics/2012NAICS/2012\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2012NAICS/2012_Definition_File.pdf).

<sup>70</sup> *See* 13 C.F.R. § 121.201, NAICS code 517410.

<sup>71</sup> *See id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>72</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517919 Other Telecommunications”, *available at* [http://www.census.gov/eos/www/naics/2012NAICS/2012\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2012NAICS/2012_Definition_File.pdf).

<sup>73</sup> *Id.*

<sup>74</sup> *See* 13 C.F.R. § 121.201, NAICS code 517919.

<sup>75</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

Transmission facilities may be based on a single technology or a combination of technologies.”<sup>76</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>77</sup> According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.<sup>78</sup> Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more.<sup>79</sup> Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Public Notice.

**23. Cable Companies and Systems.** 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.<sup>80</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>81</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>82</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>83</sup> Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Public Notice.

**24. Cable System Operators.** The Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>84</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do

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<sup>76</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), *available at* U.S. Census Bureau, 2012 NAICS Definitions, “517919 Other Telecommunications”, *available at* [http://www.census.gov/eos/www/naics/2012NAICS/2012\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2012NAICS/2012_Definition_File.pdf).

<sup>77</sup> *See* 13 C.F.R. § 121.201, NAICS code 517110.

<sup>78</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010).

<sup>79</sup> *See id.*

<sup>80</sup> *See* 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

<sup>81</sup> These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>82</sup> *See* 47 C.F.R. § 76.901(c).

<sup>83</sup> WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>84</sup> 47 U.S.C. § 543(m)(2); *see also* 47 C.F.R. § 76.901(f) & nn.1–3.

not exceed \$250 million in the aggregate.<sup>85</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>86</sup> 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,<sup>87</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

**25. Internet Service Providers.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”<sup>88</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>89</sup> According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.<sup>90</sup> Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.<sup>91</sup> Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year.<sup>92</sup> Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1,000 employees or more.<sup>93</sup> Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Public Notice.

**26. All Other Information Services.** The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates,

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<sup>85</sup> 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Red 2225 (Cable Servs. Bur. 2001).

<sup>86</sup> These data are derived from R.R. BOWKER, *BROADCASTING & CABLE YEARBOOK 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, *TELEVISION & CABLE FACTBOOK 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>87</sup> 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.

<sup>88</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), available at U.S. Census Bureau, 2012 NAICS Definitions, “517919 Other Telecommunications”, available at [http://www.census.gov/eos/www/naics/2012NAICS/2012\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2012NAICS/2012_Definition_File.pdf).

<sup>89</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>90</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

<sup>91</sup> See *id.*

<sup>92</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171103 (issued Nov. 2010).

<sup>93</sup> See *id.*

libraries, archives, Internet publishing and broadcasting, and Web search portals).”<sup>94</sup> Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts.<sup>95</sup> According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.<sup>96</sup> Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

27. In this Public Notice, the Bureau seeks public comment on procedures for implementing Connect America Phase II. Certain proposals could result in additional reporting requirements.<sup>97</sup>

28. If the Bureau implements the Phase II challenge process articulated above, commenters, including small entities, wishing to participate would be required to comply with the listed reporting and evidentiary standards. This includes filing a challenge along with supporting evidence and serving a copy of the challenge on any challenged party within a specified timeframe. Similarly, if the Bureau implements the proposed statewide commitment process, any small entity that is either accepting or declining a statewide commitment would be subject to additional reporting requirements.

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

29. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>98</sup>

30. The Public Notice seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are

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<sup>94</sup> U.S. Census Bureau, 2012 NAICS Definitions, “519190 All Other Information Services”, *available at* U.S. Census Bureau, 2012 NAICS Definitions, “517919 Other Telecommunications”, *available at* [http://www.census.gov/eos/www/naics/2012NAICS/2012\\_Definition\\_File.pdf](http://www.census.gov/eos/www/naics/2012NAICS/2012_Definition_File.pdf).

<sup>95</sup> See 13 C.F.R. § 121.201, NAICS code 519190.

<sup>96</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 519190” (issued Nov. 2010).

<sup>97</sup> Most of the reporting, recordkeeping, and compliance requirements of Connect America were discussed in earlier NPRMs. See *Notice of Inquiry and Notice of Proposed Rulemaking*, WC Docket No. 10-90 et al., 25 FCC Rcd 6657, 6685 (2010). We do not reiterate those requirements here.

<sup>98</sup> 5 U.S.C. § 603(c)(1)–(c)(4).

encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Public Notice, and the Commission will consider alternatives that reduce the burden on small entities.

31. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Public Notice, in reaching its final conclusions and taking action in this proceeding. The reporting requirements in the Public Notice could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

32. In the Public Notice, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Small entities may be more likely to face challenges to their service areas, and thus be required to comply with the reporting requirements above in order to have their rebuttals considered. The Bureau will consider comments from small entities as to whether a different standard should apply.

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

33. None.