
XIV. FINAL REGULATORY FLEXIBILITY ANALYSIS

870. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board.²¹⁷¹ In addition, the Commission prepared an IFRA in conjunction with the Recommended Decision, seeking written public comment on the proposals in the NPRM and Recommended Decision.²¹⁷² The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended.²¹⁷³

871. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling. We also note that future revisions of the rules may alter our analysis of the potential economic impact upon some small entities.

**A. Need for and Objectives of this Report
and Order and the Rules Adopted Herein.**

872. The Commission is required by sections 254(a)(2) and 410(c) of the Act, as amended by the 1996 Act, to promulgate these rules to implement promptly the universal service provisions of section 254. The principal goal of these rules is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.

873. The rules adopted in this Order establish universal service support mechanisms to preserve and advance universal service support. The rules are designed to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote access to advanced telecommunications and information technologies to all Americans in all regions of the nation. In formulating these rules, we are mindful of the balance that Congress struck between the goal of bringing the benefits of competition to consumers and the concern for the impact of the 1996 Act on small business entities, particularly small, rural telephone carriers, as evidenced by the way section 214(e)(2)

²¹⁷¹ NPRM at paras. 135-142.

²¹⁷² 61 Fed. Reg. 63,778, 63,796 (1996).

²¹⁷³ See 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), Subtitle II of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

designates carriers eligible to receive universal service support.²¹⁷⁴ Section 214(e)(2) provides that, "the State commission *may*, in the case of an area served by a rural telephone company, and *shall*, in the case of all other areas, designate more than one common carrier for a service area designated by the State commission" ²¹⁷⁵

B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA.

874. Summary of the Initial Regulatory Flexibility Analysis. The Commission performed an IRFA in the NPRM²¹⁷⁶ and an IRFA in connection with the Recommended Decision.²¹⁷⁷ In the IRFAs, the Commission sought comment on possible exemptions from the proposed rules for small telecommunications companies and measures to avoid significant economic impact on small business entities, as defined by section 601(3) of the RFA.²¹⁷⁸ The Commission also sought comment on the type and number of small entities, such as schools, libraries, and health care providers, potentially affected by the recommendations set forth in the Recommended Decision.²¹⁷⁹

1. Comments

875. General Comments. Comments were filed in response to both the NPRM and Recommended Decision IRFAs. Although it agrees that no IRFA was required for the Recommended Decision,²¹⁸⁰ the SBA contends that the IRFA issued in connection with the Recommended Decision was untimely and did not adequately take into consideration the impact of the Joint Board recommendations upon small entities.²¹⁸¹ The SBA also contends that the NPRM's lack of specificity concerning rules and reporting requirements made it difficult to evaluate the impact upon small business.²¹⁸² Small Cable II acknowledges the

²¹⁷⁴ See 47 U.S.C. § 214(e)(2).

²¹⁷⁵ 47 U.S.C. § 214(e)(2) (emphasis added).

²¹⁷⁶ NPRM at paras. 135-142.

²¹⁷⁷ 61 Fed. Reg. at 63,796.

²¹⁷⁸ NPRM at para. 142.

²¹⁷⁹ 61 Fed. Reg. at 63,799.

²¹⁸⁰ SBA comments at 24.

²¹⁸¹ SBA reply comments at 7.

²¹⁸² SBA NPRM comments at 12.

Commission's effort to reduce the cost of compliance and avoid significant economic impact upon small entities.²¹⁸³

876. Businesses with Single Connections. Many commenters oppose the recommendation to reduce universal service support for businesses with single connections.²¹⁸⁴ The SBA contends that reduced levels of support would discourage or prohibit small businesses from utilizing telecommunications services.²¹⁸⁵ The SBA also contends that the Joint Board's recommendation to restrict support to businesses with a single connection effectively would define a small business in violation of the Small Business Act.²¹⁸⁶ The SBA proposes that entities with \$5 million or less in annual gross revenue be exempt from any reduction of universal service support and that all other businesses receive support for up to five lines.²¹⁸⁷ The SBA asserts that restricting support to a single connection would adversely affect small government jurisdictions, including fire and police departments, that currently receive full universal service support.²¹⁸⁸ Some commenters contend that universal service support should not be extended to any business customers.²¹⁸⁹ They assert that Congress did not intend to provide such support to businesses,²¹⁹⁰ that there is no evidence that businesses are in need of such support,²¹⁹¹ and that such support will create the need for unduly large contributions to the support mechanisms.²¹⁹²

877. Businesses with Multiple Connections. Several commenters contend that

²¹⁸³ Small Cable II reply comments at ii.

²¹⁸⁴ See, e.g., CNMI comments at 27; SBA comments at 10-11; Tularosa Basin Tel. comments at 9; United Utilities comments at 5. See *infra* section IV.

²¹⁸⁵ SBA comments at 10-11.

²¹⁸⁶ SBA April 4 *ex parte* at 4.

²¹⁸⁷ SBA April 4 *ex parte* at 11-12.

²¹⁸⁸ SBA April 4 *ex parte* at 13-14.

²¹⁸⁹ See, e.g., Ameritech comments at 7; Kentucky PSC comments at 4; Maryland PSC comments at 9; Sprint comments at 14-15; Teleport comments at 3-4. See *infra* section IV.

²¹⁹⁰ Kentucky PSC comments at 4.

²¹⁹¹ AirTouch comments at 21; Sprint comments at 14-15.

²¹⁹² Kentucky PSC comments at 4; Maryland PSC comments at 9.

universal service support should be extended to businesses with multiple connections.²¹⁹³ They cite the importance of multiple-connections for small businesses, the potential negative impact upon rural areas of excluding such support, and the principles of the Act that provide for affordable access to telecommunications services to all consumers, including reasonably comparable rates and access by rural consumers to telecommunications services.²¹⁹⁴ The SBA cites the vulnerability of small businesses to substantial rate increases.²¹⁹⁵ The SBA contends that the Recommended Decision construes the reference to "consumers" in section 254(b)(3) too narrowly by excluding support to small businesses.²¹⁹⁶ The SBA also contends that exclusion of universal service support for small businesses would violate the universal service mandate that rates be affordable and discourage access to advanced telecommunications services by small businesses.²¹⁹⁷

878. Forward-Looking Cost Methodology. A few commenters state that forward-looking cost methodologies may not have the ability to accurately predict costs for small, rural telephone companies.²¹⁹⁸ Others contend that small, rural carriers in the continental United States should be exempt from forward-looking cost methodologies in the same manner as Alaska and insular areas because they face similar challenges.²¹⁹⁹

879. Schools and Libraries. In response to the NPRM IRFA, NSBA II comments that the proposals in the NPRM would have a significant effect on a substantial number of small government entities, including 38,000 small government jurisdictions with school and library districts, in addition to the "small telecommunications service providers" mentioned in the NPRM, and the SBA reiterates these concerns in its general comments to the NPRM.²²⁰⁰ NSBA II also contends that certain small entities, such as private schools and libraries may

²¹⁹³ See, e.g., California SBA comments at 10; GVNW comments at 7; SBA comments at 7-10; Western Alliance comments at 21-22. See *infra* section IV.

²¹⁹⁴ See, e.g., California SBA comments at 10-11; Iowa Utilities Board comments at 5; SBA comments at 2-3, 7-10, 15-18; Western Alliance comments at 21-22; RTC reply comments at 25; TDS Telecom. reply comments at 3.

²¹⁹⁵ SBA reply comments at 4-5.

²¹⁹⁶ SBA comments at 4-7.

²¹⁹⁷ SBA comments at 15-20.

²¹⁹⁸ See, e.g., Harris comments at 4; Iowa Utilities Board comments at 3-4; John Staurulakis comments at 11-15. See *infra* section VII.

²¹⁹⁹ TCA comments at 7. See *infra* section VII.

²²⁰⁰ NSBA II NPRM comments at 2-3; SBA NPRM comments at 11-12.

also be affected under the proposed rules.²²⁰¹ It contends that the bona fide request for service and applicable procedures may result in significant paperwork burdens on small government agencies and that restrictions on the resale or transfer of telecommunications services and network capacity may impose significant fiscal burdens on schools and libraries.²²⁰² In response to the Recommended Decision, Vermont PSB contends that a waiver from the processing and reporting requirements should be adopted for schools and libraries with fewer than 10 lines to avoid discouraging such organizations from applying for available discounts.²²⁰³

880. Some commenters contend that any entity that provides eligible services to a school or library should be eligible for universal service support.²²⁰⁴ They state that such eligibility is provided under section 254(h) and that Congress sought to expand deployment of telecommunications and information services to schools and libraries.²²⁰⁵ Small Cable II is concerned that the competitive bidding process for educational telecommunications services may provide ILECs with an unfair advantage.²²⁰⁶ It contends that small businesses, such as small cable operators, must be allowed to compete for the opportunity to provide services supported by universal service on a level playing field.²²⁰⁷ PageMart expresses concern that inclusion of such things as support for internal connections for schools and libraries may negatively affect small carriers by increasing the size of the universal service support mechanisms.²²⁰⁸

881. Other. California SBA asserts that small businesses will only benefit when competition is opened to all entities in the telecommunications industry.²²⁰⁹ United Utilities contends that requiring carriers to treat the amount eligible for support to eligible health care providers as an offset to carriers' universal service support obligation is anti-competitive for small carriers whose funding obligations are insufficient to allow them to receive the full

²²⁰¹ NSBA II NPRM comments at 4.

²²⁰² NSBA II NPRM comments at 5.

²²⁰³ Vermont PSB comments at 19.

²²⁰⁴ *See, e.g.*, MFS comments at 18; Small Cable reply comments at 5-7.

²²⁰⁵ Small Cable reply comments at 6-7.

²²⁰⁶ Small Cable II reply comments at ii.

²²⁰⁷ Small Cable II reply comments at iii.

²²⁰⁸ PageMart comments at 5.

²²⁰⁹ California SBA comments at 13.

offset in the current year.²²¹⁰ A few commenters state that "small" carriers should be either exempt from contribution to universal support mechanisms²²¹¹ or should be allowed to make discounted contributions.²²¹²

2. Discussion

882. General. We disagree with the SBA's general criticisms of our IRFAs procedure. Although under no obligation to do so, the Commission prepared a second IRFA in connection with the Recommended Decision to expand upon and seek comment upon issues relating to small entities. These IRFAs sought comment on the many alternatives discussed in the body of the NPRM and Recommended Decision, including statutory exemptions for certain small companies.²²¹³ The numerous general public comments concerning the impact of our proposal on small entities, including comments filed directly in response to the IRFAs, as discussed above, lead us to conclude that the IRFAs were sufficiently timely and detailed to enable parties to comment meaningfully on the proposed rules and to enable us to prepare this FRFA. We have been working with, and will continue to work with, the SBA to ensure that both our IRFAs and the FRFA fully meet the requirements of the RFA.

883. Business Connections. We make no change in the existing support mechanisms to business connections until a forward-looking cost methodology is established to determine universal service support.²²¹⁴ All residential and business connections that are currently supported will continue to be supported. Many small businesses that may have been excluded under the Joint Board's recommendation that support be limited to only businesses with single connections will benefit from this decision. We are mindful of the reasoning behind the Joint Board's recommendation to limit support to only businesses with single connections, including the similarities that exist between businesses with single connections and residential consumers. We are also mindful of the concerns of many commenters on this issue, including the SBA, advocating our rejection of the Joint Board's recommendation. The Joint Board's recommendation will be revisited as we establish a forward-looking cost methodology, and, therefore, we do not find it necessary to address comments relating to the Joint Board's recommendation on the extent of support for business connections at this time.

²²¹⁰ United Utilities comments at 7.

²²¹¹ See, e.g., Florida PSC NPRM comments at 24; Teleport NPRM comments at 12-14; SBA NPRM comments at 9-11.

²²¹² See, e.g., PCIA NPRM comments at 8.

²²¹³ NPRM at para. 142.

²²¹⁴ See *infra* section VII.

884. Forward-Looking Cost Methodology. We have taken into consideration the concerns of Harris and others that forward-looking cost methodologies do not have the ability to predict costs for small, rural telephone companies.²²¹⁵ To minimize the financial impact of this change on small entities, we shall permit small, rural carriers to shift to a forward-looking cost methodology more gradually than larger carriers. We believe that upon development of an appropriate forward-looking cost methodology, the Commission's mechanism for calculating support for small, rural carriers will minimize the adverse effects of an immediate shift to a forward-looking cost methodology. In 1998 and 1999, small, rural carriers will continue to receive high cost loop support based on the existing system. Beginning on January 1, 2000, the nationwide average loop costs, on which carriers' high cost loop support is currently based, will be indexed to changes in the gross domestic product chained price index (GDP-CPI). Starting January 1, 1998, DEM weighting for small, rural carriers will continue to be calculated under the existing prescribed formulas, but the interstate allocation factor will be maintained at 1996 levels. LTS support for rural carriers will be indexed to changes in the nationwide average loop costs starting in 1998. We will revisit the issue of support for small, rural companies and the conversion to an alternative methodology when we adopt a forward-looking cost methodology for rural carriers. Small, rural carriers in Alaska and insular areas will not be required to transition to a forward-looking cost methodology until further review.

885. Schools and Libraries. Despite the concerns of some commenters that the IRFAs performed in conjunction with the NPRM and Recommended Decision overlooked small government jurisdictions, we note that the IRFA that was adopted pursuant to the Recommended Decision specifically acknowledged the 112,314 public and private schools and 15,904 libraries potentially affected by the recommendations made by the Joint Board.²²¹⁶ We also reject NSBA II's assertion that the Commission should not impose reporting requirements and restrictions upon resale of telecommunications services. In section 254(h)(3), Congress clearly prohibits eligible public institutions from reselling supported telecommunications services to ensure that only eligible institutions can purchase services at a discount.²²¹⁷ We have implemented this requirement so as to avoid any unnecessary financial or paperwork burden, and commenters offer no evidence or reason that it will impose any such burden on eligible institutions.

886. To foster vigorous competition for serving schools and libraries, we conclude that non-telecommunications carriers must also be permitted to compete to provide these

²²¹⁵ See *infra* section VII.

²²¹⁶ 61 Fed. Reg. at 63,799.

²²¹⁷ 47 U.S.C. § 254(h)(3).

services in conjunction with telecommunications carriers or even on their own. Therefore, we encourage non-telecommunications carriers, many of which may be small businesses, either to enter into partnerships or joint ventures with telecommunications carriers that are not currently serving the areas in which the libraries and schools are located or to offer services on their own.²²¹⁸ We have also made every effort to ensure that all entities, including small entities, are allowed to participate and compete in the universal service program on an equal basis by adopting the additional principle of competitive neutrality in the requirement for contribution, and distribution of, and the determination of eligibility for universal service support. We note that section 254(h)(2) specifically requires that the Commission establish competitively neutral rules to enhance access to advanced services for classrooms, libraries, and health care providers.²²¹⁹ We conclude that implementation of such a principle will allow small businesses, such as small cable operators, to compete fairly with ILECs and other entities in providing telecommunications services to classrooms and libraries.

887. We share the concerns of PageMart that the size of the fund not infringe upon the ability of small entities to participate and utilize telecommunications services by unduly increasing the expense of such services. We have made every effort to implement the mandate established by Congress to provide discounted access to telecommunications services to schools and libraries in the most cost-effective and economical manner possible including, imposing a cap on the schools and libraries fund. The Joint Board carefully balanced the potential benefits of support against the burden imposed on those who would ultimately contribute such support, and we adopt the funding levels it recommended.

888. Other. We acknowledge the concern of United Utilities that requiring carriers to treat the support amount to eligible health care providers as an offset may be burdensome to small carriers whose funding obligations may be insufficient to allow recovery of the full offset in the current year.²²²⁰ Although we agree with the Joint Board's recommendation initially to limit carriers to offsets, we also expressly agree that small carriers should not be required to carry forward such offset credits beyond one year. Accordingly, we conclude that telecommunications carriers providing services to rural health care providers at reasonably comparable rates under section 254(h)(1)(A) should treat the support amount as an offset toward the carrier's universal service support obligation for the year in which the expenses were incurred.²²²¹ To the extent that the amount of universal service support due to a carrier exceeds the carrier's universal service obligation, calculated on an annual basis, the carrier

²²¹⁸ See *supra* section X.

²²¹⁹ 47 U.S.C. § 254(h)(2).

²²²⁰ See *supra* section XI.

²²²¹ See *supra* section XI.

may receive a direct reimbursement in the amount of the difference. We believe allowing carriers to receive direct reimbursement on those terms should help ensure that they have adequate resources to cover the costs of providing supported services. Small carriers may find it difficult to sustain such costs absent prompt reimbursement. Pursuant to this approach, those small carriers who do not contribute to the universal service fund because they are subject to the *de minimis* exemption may receive direct reimbursement as well. Although we agree with the Joint Board that an offset mechanism is both less vulnerable to manipulation and more easily administered and monitored than direct reimbursement, we conclude that the approach set forth here appropriately balances the concerns of carriers whose rate reductions exceed their contributions in a given year against the need to adopt a reimbursement method that may be easily administered and monitored.

889. We disagree with Florida PSC and others that suggest that "small" carriers should be treated differently from "large" carriers for purposes of assessing contributions to universal service.²²²² Section 254(d) requires that "every telecommunications carrier that provides interstate telecommunications service shall contribute, on an equitable and non-discriminatory basis" to preserve and advance universal service.²²²³ This section makes no distinction between large and small carriers. While some commenters contend that the *de minimis* exemption should be applied to small carriers, we find the *de minimis* exemption should be limited to cases in which a carrier's contribution to universal service in any given year is less than \$100.00.²²²⁴ Small carriers may qualify under this provision and we conclude that it is not necessary to make a general exception for all small carriers. Although we note that several commenters favor a graduated contribution system which would be more equitable to small carriers, we find that a uniform contribution system, subject to the *de minimis* exemption, is fair and equitable to all carriers, because all carriers will be subject to the same requirements. We believe that this system is also competitively neutral and consistent with congressional intent to promote competition in the telecommunications industry.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply.

890. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C.

²²²² See *infra* section XIII.

²²²³ 47 U.S.C. § 254(d).

²²²⁴ See *infra* section XIII.

§ 632, unless the Commission has developed one or more definitions that are appropriate to its activities.²²²⁵ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).²²²⁶ The RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.²²²⁷ As of 1992, the most recent figures available, there were 85,006 governmental entities in the United States.²²²⁸

891. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities having fewer than 1,500 employees.²²²⁹ This FRFA first discusses generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss other small entities potentially affected and attempt to refine those estimates pursuant to this Report and Order.

892. Small incumbent LECs subject to these rules are either dominant in their field of operation or are not independently owned and operated, and, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."²²³⁰ Accordingly, our use of the terms "small entities" and "small business" does not encompass small incumbent LECs.²²³¹ Out of an abundance of caution, however, for regulatory flexibility analysis purposes,²²³² we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that

²²²⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of 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 definitions in the Federal Register."

²²²⁶ Small Business Act, 15 U.S.C. § 632 (1996).

²²²⁷ 5 U.S.C. § 601(5).

²²²⁸ United States Department of Commerce, Bureau of the Census, *1992 Census of Governments (1992 Census of Governments)*.

²²²⁹ 13 C.F.R. § 121.201.

²²³⁰ *See Local Competition Order*, 11 FCC Rcd at 16144-16145, 16150.

²²³¹ *See Local Competition Order*, 11 FCC Rcd at 16150.

²²³² *See* 13 C.F.R. § 121.902(b)(4).

arguably might be defined by the SBA as "small business concerns."

893. We note that our analysis of the entities affected by the rules promulgated in this Order is subject to change as future revisions are made in the universal service rules.²²³³ Moreover, we note that section XIII.B discusses specific examples of some of the entities affected by our rules but is not to be considered an exhaustive list of all of the entities potentially affected.²²³⁴ We also note that our analysis as to the impact of the rules upon small entities may be revised pending any revision of the rules.

1. Telephone Companies (SIC 4813)

894. Total Number of Telephone Companies Affected. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.²²³⁵ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."²²³⁶ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms would qualify as small entity telephone service firms or small incumbent LECs, as defined above, that may be affected by this Order.

895. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless)

²²³³ See *infra* section VII.

²²³⁴ See Appendix I, subpart H for a list of potential contributors including: cellular telephone and paging services; mobile radio services; operator services; personal communications services (PCS); access to interexchange service; alternative and special access service; WATS; toll-free service; 900 service; message telephone service; private line service; telex; telegraph; Title II video transmission service; Title II satellite service; resale of interstate service; and payphone service.

²²³⁵ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size* at Firm Size 1-123 (indicating only the number of such firms engaged in providing telephone service and not the size of such firms) (1995) (*1992 Census*).

²²³⁶ 15 U.S.C. § 632(a)(1).

companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.²²³⁷ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.²²³⁸ Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small entities or small incumbent LECs or small entities based on these employment statistics. As it seems certain that some of these carriers are not independently owned and operated, however, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA's definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules adopted in this Order.

896. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²²³⁹ The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*.²²⁴⁰ According to the most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.²²⁴¹ As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

897. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone

²²³⁷ 1992 Census, *supra*, at Firm Size 1-123.

²²³⁸ 13 C.F.R. § 121.201, SIC 4812.

²²³⁹ 13 C.F.R. § 121.201, SIC 4813.

²²⁴⁰ Federal Communications Commission, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data* (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (*TRS Worksheet*).

²²⁴¹ *TRS Worksheet* at Tbl. 1.

communications companies other than radiotelephone (wireless) companies.²²⁴² The most reliable source of information regarding the number of IXC's nationwide appears to be the data that the Commission collects annually in connection with *TRS Worksheet*. According to the most recent data, 130 companies reported that they were engaged in the provision of interexchange services.²²⁴³ As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXC's that may be affected by the decisions and rules adopted in this Order.

898. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²²⁴⁴ The most reliable source of information regarding the number of CAPs nationwide of which we are aware is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 57 companies reported that they were engaged in the provision of competitive access services.²²⁴⁵ We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this Order.

899. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²²⁴⁶ The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 25 companies

²²⁴² 13 C.F.R. § 121.201, SIC 4813.

²²⁴³ *TRS Worksheet* at Tbl. 1.

²²⁴⁴ 13 C.F.R. § 121.201, SIC 4813.

²²⁴⁵ *TRS Worksheet* at Tbl. 1.

²²⁴⁶ 13 C.F.R. § 121.201, SIC 4813.

reported that they were engaged in the provision of operator services.²²⁴⁷ We do not have information on the number of carriers that are not independently owned and operated, nor have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted in this Order.

900. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²²⁴⁸ The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.²²⁴⁹ We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this Order.

901. Radiotelephone (Wireless) Carriers. The SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.²²⁵⁰ According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.²²⁵¹ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. We do not have information on the number of carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as

²²⁴⁷ *TRS Worksheet* at Tbl. 1.

²²⁴⁸ 13 C.F.R. § 121.201, SIC 4813.

²²⁴⁹ *TRS Worksheet* at Tbl. 1.

²²⁵⁰ *1992 Census* at Firm Size 1-123.

²²⁵¹ 13 C.F.R. § 121.201, SIC 4812.

small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

902. Cellular Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 792 companies reported that they were engaged in the provision of cellular services.²²⁵² We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this Order.

903. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under the SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to the most recent data, 117 companies reported that they were engaged in the provision of mobile services.²²⁵³ We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under the SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in this Order.

904. Broadband Personal Communications Service (PCS) Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission has defined "small entity" in the auctions for Blocks C and F as a entity that has average gross revenues of less than \$40

²²⁵² *TRS Worksheet* at Tbl. 1.

²²⁵³ *TRS Worksheet* at Tbl. 1.

million in the three previous calendar years.²²⁵⁴ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenue of not more than \$15 million for the preceding three calendar years.²²⁵⁵ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition 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% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

905. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given the fact that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

906. Rural Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Rural Radiotelephone Service, which is defined in Section 22.99 of the Commission's Rules.²²⁵⁶ A subset of the Rural Radiotelephone Service is BETRS, or Basic Exchange Telephone Radio Systems.²²⁵⁷ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing fewer than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA's definition of a small

²²⁵⁴ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824 (1996).

²²⁵⁵ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824 (1996).

²²⁵⁶ 47 C.F.R. § 22.99.

²²⁵⁷ See 47 C.F.R. §§ 22.757 - 22.759.

business.²²⁵⁸

907. Public Safety Radio Services. Public Safety Radio Services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.²²⁵⁹ There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As we indicated, all governmental entities with populations of less than 50,000 fall within the definition of a small business.²²⁶⁰ There are approximately 37,566 governmental entities with populations of less than 50,000.²²⁶¹

908. Specialized Mobile Radio (SMR) Licensees. Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.²²⁶² The rules

²²⁵⁸ 13 C.F.R. § 121.201, SIC 4812.

²²⁵⁹ With the exception of the special emergency service, these services are governed by subpart B of Part 90 of the Commission's rules. 47 C.F.R. § 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under government control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service use the 39 channels allocated to this service for emergency medical service communications related to the actual delivery of emergency medical treatment. 47 C.F.R. §§ 90.15 through 90.27. The 19,478 licensees in the special emergency medical service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 C.F.R. §§ 90.33 through 90.55.

²²⁶⁰ 5 U.S.C. § 601(5).

²²⁶¹ 1992 *Census of Governments*.

²²⁶² See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking* 11 FCC Rcd 1463 (1995).

adopted in this Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. 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 less than \$15 million.

909. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. Moreover, there is no basis on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made for purposes of this FRFA, we assume that all of the licenses may be awarded to small entities that may be affected by the decisions in this Order.

910. Resellers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company except radiotelephone (wireless) companies.²²⁶³ The most reliable source of information regarding the number of resellers nationwide of which we are aware, however, is the data that the Commission collects annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.²²⁶⁴ We have no information on the number of carriers that are not independently owned and operated, nor on those that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this Order.

911. 900 Service. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 900 services. The most reliable source of information regarding the number of 900 service carriers with 900 code assignments of which we are aware is the data that the Commission collects annually in connection with the *Long*

²²⁶³ 13 C.F.R. § 121.201, SIC 4813.

²²⁶⁴ *TRS Worksheet* at Tbl. 1.

Distance Carrier Code Assignments.²²⁶⁵ According to our most recent data, 68 carriers reported that they were engaged in 900 service.²²⁶⁶ Consequently, we estimate that there are fewer than 68 small entity 900 service providers that may be affected by the decisions and rules adopted in this Order.

912. Private Line Service. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to private line service. The most reliable source of information regarding the number of private line service providers of which we are aware is the data the Commission collects annually in connection with the *TRS Worksheet*. According to our most recent data, 635 LECs and other carriers reported that they were engaged in private line service.²²⁶⁷ Consequently, we estimate that there are fewer than 635 LECs and other carriers providing private line service that may be affected by the decisions and rules adopted in this Order.

913. Telegraph. The SBA has developed a definition of small entities for telegraph and other communications that include all such companies generating less than \$5 million in revenue annually.²²⁶⁸ The Commission collects its own data on telegraph companies in connection with the *International Telecommunications Data*.²²⁶⁹ According to our most recent data, 4 facilities based and 1 resale provider reported that they engaged in international telegraph service.²²⁷⁰ According to the Census Bureau, there were 286 total telegraph firms and 247 had less than \$5 million in annual revenue.²²⁷¹ Consequently, we estimate that there are less than 247 small telegraph firms that may be affected by the decisions and rules adopted in this Order.

914. Telex. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to telex. The most reliable source of information

²²⁶⁵ Federal Communications Commission, Industry Analysis Division, *Long Distance Carrier Code Assignments*, (Oct. 1996).

²²⁶⁶ *Long Distance Carrier Code Assignment* at Tbl. 12.

²²⁶⁷ *TRS Worksheet* at Tbl. 1.

²²⁶⁸ 13 C.F.R. § 121.201, SIC 4822.

²²⁶⁹ Federal Communications Commission, Industry Analysis Division, *1995 Section 43.61 International Telecommunications Data* (Jan. 1997) (*International Telecommunications Data*).

²²⁷⁰ *International Telecommunications Data*, Fig. 7 - 1995 U.S. Billed Revenues for Facilities-Based and Facilities - Resale Service.

²²⁷¹ U.S. Department of Commerce, Bureau of Census, *1992 Economic Census Industry and Enterprise Size Reports* at Tbl. 2D, SIC 4822 (Bureau of Census data under contract with the Office of Advocacy).

regarding the number of telegraph service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 5 facilities based and 2 resale provider reported that they engaged in telex service.²²⁷² Consequently, we estimate that there are fewer than 7 telex providers that may be affected by the decisions and rules adopted in this Order.

915. Message Telephone Service. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to message telephone service. The most reliable source of information regarding the number of message telephone service providers of which we are aware is the data the Commission collects in connection with the *International Telecommunications Data*. According to our most recent data, 1,092 carriers reported that they engaged in message telephone service.²²⁷³ Consequently, we estimate that there are fewer than 1,092 message telephone service providers that may be affected by the decisions and rules adopted in this Order.

916. 800 Subscribers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 subscribers.²²⁷⁴ The most reliable source of information regarding the number of 800 subscribers is data we collect on the number of 800 numbers in use.²²⁷⁵ According to our most recent data, the number of 800 numbers in use was 6,987,063. We do not have information on the number of carriers not independently owned and operated, nor having more than 1,500 employees, and thus are unable to estimate with greater precision the number of 800 subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers.

2. Cable System Operators (SIC 4841)

917. The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating less than \$11 million in revenue annually.²²⁷⁶ This definition includes cable systems operators, closed circuit

²²⁷² *International Telecommunications Data*, Fig. 7 - 1995 U.S. Billed Revenues for Facilities-Based and Facilities - Resale Service.

²²⁷³ *International Telecommunications Data*, All Carriers: International Message Telephone Resale Service at Tbl. D1.

²²⁷⁴ We include all toll-free number subscribers in this category, including 888 numbers.

²²⁷⁵ Federal Communications Commission, Industry Analysis Division, *FCC Releases, Study on Telephone Trends* at Tbl. 20 (May 16, 1996).

²²⁷⁶ 13 C.F.R. § 121.201, SIC 4841.

television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than \$11 million in revenue.²²⁷⁷ We note that cable system operators are included in our analysis due to their ability to provide telephony.

918. The Commission has developed with the SBA's approval our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.²²⁷⁸ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.²²⁷⁹ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are less than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this Order. We conclude that only a small percentage of these entities currently provide qualifying "telecommunications services" required by the Act and, therefore, estimate that the number of such entities affected are significantly fewer than noted.

919. The Act also contains a definition of small cable system operator, 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."²²⁸⁰ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.²²⁸¹ Based on available data, we find that the

²²⁷⁷ U.S. Department of Commerce, Bureau of Census, *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC 4841 (Bureau of the Census data under contract to the Office of Advocacy of the SBA).

²²⁷⁸ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration* 10 FCC Rcd 7393.

²²⁷⁹ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

²²⁸⁰ 47 U.S.C. § 543(m)(2).

²²⁸¹ 47 C.F.R. § 76.1403(b).

number of cable operators serving 617,000 subscribers or less total 1,450.²²⁸² We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,²²⁸³ and thus 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 Act.

920. Direct Broadcast Satellites (DBS). Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is one with \$11 million or less in annual receipts.²²⁸⁴ As of December 1996, there were eight DBS licensees. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

921. International Services. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11 million or less in annual receipts.²²⁸⁵ According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than \$9,999 million.²²⁸⁶ We note that those entities providing only international service will not be affected by our rules. We do not, however, have sufficient data to estimate with greater detail those providing both international and interstate services. Consequently, we estimate that there are fewer than 775 small international service entities potentially impacted by our rules.

922. International Broadcast Stations. Commission records show that there are 20

²²⁸² Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

²²⁸³ We receive such information on a case-by-case basis only if a cable operator appeals to a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 C.F.R. § 76.1403(d).

²²⁸⁴ 13 C.F.R. § 121.201, SIC 4841.

²²⁸⁵ 13 C.F.R. § 120.121, SIC 4899.

²²⁸⁶ United States Dept. of Commerce, Bureau of Census, *1992 Economic Census Industry and Enterprise Receipts Size Report*, at Tbl. 2D.

international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. We note that those entities providing only international service will not be affected by our rules. We do not, however, have sufficient data to estimate with greater detail those providing both international and interstate services. Consequently, we estimate that there are fewer than 20 international broadcast stations potentially impacted by our rules.

3. Municipalities

923. The term "small government jurisdiction" is defined as "government of . . . districts with populations of less than 50,000."²²⁸⁷ The most recent figures indicate that there are 85,006 governmental entities in the United States.²²⁸⁸ This number includes such entities as states, counties, cities, utility districts and school districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities, and towns, 37,566 or 96%, have populations of fewer than 50,000. Consequently, we estimate that there are 37,566 "small government jurisdictions" that will be affected by our rules.

4. Rural Health Care Providers

924. Neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support.²²⁸⁹ We estimate that there are: (1) 625 "post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools," including 403 rural community colleges,²²⁹⁰ 124 medical schools with rural programs,²²⁹¹ and 98 rural teaching hospitals;²²⁹² (2) 1,200 "community health centers or health centers providing health care to

²²⁸⁷ 5 U.S.C. § 601(5).

²²⁸⁸ 1992 *Census of Governments*.

²²⁸⁹ See 47 U.S.C. § 254(h)(5)(B).

²²⁹⁰ Letter from Kent A. Phillippe, American Association of Community Colleges to John Clark, FCC, dated March 31, 1997 (AACC March 31 *ex parte* at 2).

²²⁹¹ Letter from Donna J. Williams, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 9, 1996 (AAMC September 9 *ex parte*).

²²⁹² Letter from Kevin G. Serrin, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 5, 1996 (AAMC September 5 *ex parte*).

migrants;"²²⁹³ (3) 3,093 "local health departments or agencies" including 1,271 local health departments²²⁹⁴ and 1,822 local boards of health;²²⁹⁵ (4) 2,000 "community mental health centers;"²²⁹⁶ (5) 2,049 "not-for-profit hospitals;"²²⁹⁷ and (6) 3,329 "rural health clinics."²²⁹⁸ We do not have sufficient information to make an estimate of the number of consortia of health care providers at this time. The total of these categorical numbers is 12,296. Consequently, we estimate that there are fewer than 12,296 health care providers potentially affected by the rules in this Order. According to the SBA definition, hospitals must have annual gross receipts of \$5 million or less to qualify as a small business concern.²²⁹⁹ There are approximately 3,856 hospital firms, of which 294 have gross annual receipts of \$5 million or less. Although some of these small hospital firms may not qualify as rural health care providers, we are unable at this time to estimate with greater precision the number of small hospital firms which may be affected by this Order. Consequently, we estimate that there are fewer than 294 hospital firms affected by this Order.

5. Schools (SIC 8211) and Libraries (SIC 8231)

925. The SBA has established a definition of small elementary and secondary schools and small libraries as those with under \$5 million in annual revenues.²³⁰⁰ The most reliable source of information regarding the total number of kindergarten through 12th grade (K-12) schools and libraries nationwide of which we are aware appears to be data collected by the United States Department of Education and the National Center for Educational Statistics. Based on that information, it appears that there are approximately 86,221 public

²²⁹³ Letter from Richard C. Bohrer, Division of Community and Migrant Health, HHS, to John Clark, FCC, dated March 31, 1997 (HHS March 31 *ex parte* at 2).

²²⁹⁴ Telephone contact by John Clark, FCC, with Carol Brown, National Association of County Health Officials, May 2, 1997.

²²⁹⁵ Letter from Ned Baker, Nat'l Ass'n of Local Boards of Health, to John Clark, FCC, dated April 2, 1997 (Nat'l Ass'n of Local Boards of Health April 2 *ex parte*).

²²⁹⁶ Telephone contact by John Clark, FCC, with Mike Weakin, Center for Mental Health Services, HHS, on May 2, 1997.

²²⁹⁷ American Hospital Association Center for Health Care Leadership, *A Profile of Nonmetropolitan Hospitals 1991-95* at 5 (1997).

²²⁹⁸ Letter from Patricia Taylor, ORHP/HHS, to John Clark, FCC, dated May 2, 1997 (ORHP/HHS May 2 *ex parte*).

²²⁹⁹ 13 C.F.R. § 121.201, SIC 8060.

²³⁰⁰ 13 C.F.R. § 121.201, SIC 8211 and 8231.

and 26,093 private K-12 schools in the United States (SIC 8211).²³⁰¹ It further appears that there are approximately 15,904 libraries, including branches, in the United States (SIC 8231).²³⁰² Although it seems certain that not all of these schools and libraries would qualify as small entities under the SBA's determination, we are unable at this time to estimate with greater precision the number of small schools and libraries that would qualify as small entities under the definition. Consequently, we estimate that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in this Order.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

926. Structure of the Analysis. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of this Order.²³⁰³ As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected.²³⁰⁴

**Summary Analysis: Section III
PRINCIPLES**

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

927. There are no reporting or other compliance requirements relating directly to the principles enumerated in section 254(b) or relating directly to the additional principle of competitive neutrality, as adopted by the Commission pursuant to section 254(b)(7).

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

²³⁰¹ Letter from Emilio Gonzalez, to Mark Nadel, FCC, dated November 4, 1996 (U.S. Department of Education November 4 *ex parte*).

²³⁰² National Center for Education Statistics, *Public Library Structure and Organization in the United States* Tbl. 1 (March 1996).

²³⁰³ See 5 U.S.C. § 604(a)(4).

²³⁰⁴ See 5 U.S.C. § 604(a)(5).

928. As set forth in section III.C, we conclude that a fair and reasonable application of the principles enumerated by Congress in section 254(b) and the additional principle of competitive neutrality will favorably impact all business entities, including smaller entities, and promote universal service.²³⁰⁵ By adopting the additional principle of competitive neutrality, we seek to ensure that all entities, including smaller entities, are treated on an equal basis so that contributions to and disbursements from the universal service support mechanisms will not be unfairly biased either in favor of or against any entity or group. We acknowledge the comments of certain rural telephone carriers, many of whom may be small entities, who contend that promotion of competition must be considered only secondary to the advancement of universal service. These commenters contend that certain provisions of the 1996 Act are intended to provide "rural safeguards" such as eligibility determinations for rural telephone carriers under section 214(e)(2). We balance these interests by acknowledging that a principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote the most efficient technologies that, over time, may provide competitive alternatives in rural areas and thereby benefit rural consumers. We also recognize technological neutrality as a concept encompassed by competitive neutrality. In doing so, the Commission has expanded universal service support to many small entities, both as providers and consumers of telecommunications services, in accordance with congressional intent to promote competition and provide affordable access to telecommunications and information services.

Summary Analysis: Section IV DEFINITION OF UNIVERSAL SERVICE

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

929. All eligible carriers will be required to provide each of the core services designated for universal service support pursuant to section 254(c)(1) in order to receive universal service support, subject to certain enumerated exceptions. Upon a showing by an otherwise eligible carrier that exceptional circumstances prevent that carrier from providing single-party service, access to E911 service, or toll limitation services, a state commission may grant petitions by carriers for a period of time during which otherwise eligible carriers that are unable to provide those services can still receive universal service support while they make the network upgrades necessary to offer these services.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

930. As set forth in section IV.B.2, we find that universal service support should be

²³⁰⁵ 47 U.S.C. § 254(b).

provided for eligible carriers that provide each of the designated services. In addition, we define the services designated for support in a competitively neutral manner, which permits wireless and other potential competing carriers to offer each of the designated services. This approach will permit cellular and other wireless carriers and non-incumbent providers, many of which may be small businesses, to compete in high cost areas.

931. In section IV.C, we seek to strike a reasonable balance between the need for single-party service, access to E911, and toll limitation services for low-income consumers, and the recognition that exceptional circumstances may prevent some carriers, particularly smaller carriers, from offering these services at present. Thus, we take a number of actions in this section to minimize the burdens on smaller entities wishing to receive universal service support. For example, state commissions will be permitted to approve an eligible carrier's requests for periods of time during which the carrier can receive universal service support while making the network upgrades needed to offer single-party service, access to E911, or toll limitation service. To the extent that this class of carriers includes smaller carriers, this approach reduces the burden on these small carriers by permitting additional time to comply with the requirement to provide all universal services prior to receiving support.

932. Although commenters suggest other services for inclusion in the definition of the supported core services, as set forth in section IV.B.2, we decline to expand the definition to include additional services at this time. We conclude that an overly broad definition of the section 254(c)(1) core services might have the unintended effect of creating a barrier to entry for some carriers, many of which may be small entities, because these carriers might be technically unable to provide the additional services.

933. As set forth in section IV.D, we acknowledge the many comments both in favor of and opposed to the Joint Board's recommendation to restrict support to businesses with a single connection. We note, however, that we are adopting a plan for implementing the new universal service mechanisms that includes extending the existing support mechanisms until such time as a forward-looking cost methodology is established. Under this approach, all residential and business connections that are currently supported will continue to receive support. This approach will benefit small telecommunications carriers and, tangentially, small businesses located in rural areas. We will, however, re-examine whether to adopt the Joint Board's recommendation to limit support for designated services to single residential connections and businesses with a single connection during the course of implementing a forward-looking cost methodology. As we currently make no change in the existing support mechanisms and will revisit this issue at a later date, we find that comments relating to this issue will be addressed at that time.

934. We do not establish service quality standards in section IV.E. Rather, we find that, to the extent possible, the Commission should rely on existing data, including the ARMIS data filed by price-cap LECs, to monitor service quality. We find that creating

federal service quality standards would burden carriers, including small carriers, and would be inconsistent with the 1996 Act's goal of a "pro-competitive, de-regulatory national policy framework."²³⁰⁶

**Summary Analysis: Section V
AFFORDABILITY**

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

935. The 1996 Act does not require, and we did not adopt, any new reporting, recordkeeping or other compliance requirements in this section.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

936. As set forth in section V.B, we agree with commenters that consumer income levels should be among the factors considered when assessing rate affordability. We find that a rate that is affordable to most consumers in affluent areas may not be affordable to lower income consumers. We conclude, in light of the significant disparity in income levels throughout the country, that per capita income of a local or regional area, and not a national median, should be considered in determining affordability. In doing so, we decline to adopt proposals to establish nationwide standards for measuring the impact of consumer income levels on affordability. We find that establishing a formula based on percentage of consumers' disposable income dedicated to telecommunications services would over-emphasize income levels in relation to other non-rate factors that may affect affordability and fail to reflect the effect of local circumstances on the affordability of a particular rate. We similarly reject proposals to define affordability based on a percentage of national median income and because such a standard would tend to overestimate the price at which service is affordable when applied to a service area where income level is significantly below the national median. We conclude that this approach will benefit small businesses located in rural areas by taking into consideration the economic factors relating to local areas rather than applying uniform national standards in making determinations relating to affordability.

937. Small entities will be impacted by our determination, as set forth in section V.B, that the states should have primary responsibility for monitoring the affordability of telephone service rates and in working in concert with the Commission to ensure the affordability of such rates. The Commission will work with affected states to determine the causes of both declining statewide subscribership levels and below average statewide subscribership levels. We conclude that small businesses, as well as other

²³⁰⁶ Joint Explanatory Statement at 113.

telecommunications consumers, will benefit from the joint effort of the states and Commission to monitor the affordability of telephone service rates and identify potential corrective measures.

**Summary Analysis: Section VI
CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT**

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

938. To receive most types of universal service support, the Act requires that a carrier must demonstrate to the relevant state commission that it has complied with criteria that Congress established in section 214(e), implemented by this Order. The statutory criteria require that a telecommunications carrier be a common carrier and offer, throughout a service area designated by the state commission, the services supported by federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services. A carrier must also advertise the availability of and charges for these services throughout its service area. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advanced notice to the state commission of such relinquishment. Applying for designation as an eligible carrier and demonstrating fulfillment of the statutory criteria may require administrative and legal skills.

939. Pursuant to section 214(e)(5), a state commission must seek the Commission's concurrence before a new definition of a rural service area may be adopted. The state commission or the affected carrier must submit the proposal to the Commission, which may require legal and administrative skills.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

940. As set forth in section VI.B, we adopt no additional federal criteria for eligibility, requiring only that carriers meet the eligibility criteria established by Congress in the 1996 Act. We reject arguments calling for more stringent eligibility rules, such as requiring new entrants to comply with any state rules applicable to the incumbent carrier, that could have imposed additional burdens on new entrants, many of which may be small entities. We conclude that a carrier can use any technology to meet the eligibility criteria, thus preserving the competitive neutrality of the eligibility requirements, and protecting all providers, including small providers. Our interpretation of the section 214(e) facilities requirement promotes the universal service policies adopted by Congress and avoids imposing undue burdens on all eligible carriers, including small carriers. This interpretation enables small competitive carriers to become eligible telecommunications carriers. We also conclude that any burdens that might be placed on small incumbent LECs facing competition from competitive LECs may be avoided or mitigated by the states when they consider petitions for

exemptions, suspensions or modifications of the requirements of section 251(c) by rural telephone companies and when they consider designating multiple eligible carriers pursuant to section 214(e)(3).

941. Additionally, as discussed in section VI.C, where states alone are responsible for designating a carrier's service area, we encourage states to adopt service areas that are not unreasonably large because unreasonably large service areas might discourage competitive entry or favor some carriers, including large carriers. We also indicate that, if a state commission agrees and the Commission does not disagree, the service area served by a rural telephone company (which is likely to be a small company), should be the study area in which they currently provide service. This requirement minimizes any burdens rural telephone companies would face from needing to recalculate costs over a differently-sized area. This requirement also protects small incumbent LECs from competitors that may target only the most financially lucrative customers in an area. We find that these provisions should minimize burdens on small entities.

942. We also conclude that the "pro-competitive, de-regulatory" intent of the 1996 Act would be furthered if we take action to minimize any procedural delay caused by the need for federal-state coordination to redefine rural service areas. Under the procedures we adopt, after a state has concluded that a service area definition different from a rural telephone company's study area is appropriate, either the state or a carrier must seek the agreement of the Commission. Upon the receipt of the proposal, the Commission will issue a public notice on the proposal. If the Commission does not act upon the proposal within 90 days of the public notice release date, the proposal will be deemed approved by the Commission and may take effect according to state procedure without further action on the part of the Commission. This procedure minimizes the burden on all parties, including small parties, that might seek to alter the definition of a rural service area.

Summary Analysis: Section VII HIGH COST SUPPORT

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

943. Small, rural carriers comprise the specific class of small entities that are subject to high cost reporting requirements. We define "rural" as those carriers that meet the statutory definition of a "rural telephone company" set forth at 47 U.S.C. § 153(37).

944. To receive high cost support small, rural carriers have been required, under previous rules, to report the number of lines they serve and their embedded costs at the end of each year. Because small, rural carriers will receive support based on their embedded costs from 1998 until a forward-looking cost methodology is chosen, their reporting and recordkeeping requirements will remain the same. These requirements should not affect small

entities disproportionately because in order to receive support, large, non-rural carriers must also report the number of lines they serve and their embedded costs.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

945. Currently, an ILEC is eligible for support if its embedded loop costs, as reported annually, exceed 115 percent of the national average loop cost. We anticipate that we will adopt a forward-looking cost methodology for large, non-rural carriers to take effect on January 1, 1999. Until a forward-looking cost methodology for non-rural carriers takes effect, large, non-rural carriers will continue to receive high cost loop support and LTS based on the mechanisms in place for small, rural carriers.

946. To minimize the financial impact of this rule change on small entities, however, we shall permit small, rural carriers to shift to a forward-looking cost methodology more gradually than the large carriers.²³⁰⁷ We believe that the Commission's mechanism for calculating support for small, rural carriers will minimize the adverse effects of an immediate shift to a forward-looking cost methodology. In 1998 and 1999, small, rural carriers will continue to receive high cost loop support based on the existing system. Beginning on January 1, 2000, the nationwide average loop costs, on which carriers' high cost loop support is currently based, will be indexed to changes in the GDP-CPI. Starting January 1, 1998, DEM weighting for small, rural carriers will continue to be calculated under the existing prescribed formulas, but the interstate allocation factor will be maintained at 1996 levels. LTS support for rural carriers will be indexed to changes in the nationwide average loop costs starting in 1998. We will revisit the issue of support for small, rural companies and the conversion to an alternative methodology when we adopt a forward-looking cost methodology for rural carriers. We find that a gradual shift for rural carriers should enable these carriers to adjust their operations in preparation for the use of a forward-looking cost methodology.

947. All carriers' high cost loop support for corporate operations expense, however, will be limited to 115 percent of an amount defined by a formula based upon a statistical study that predicts corporate operations based on the number of access lines. Because we will determine the benchmark for corporate and overhead expenses based on a carrier's number of lines, any limitation on corporate expenses would not disproportionately impact small carriers. We will also continue the current cap limiting growth of the high cost loop support mechanism. In order to ensure that the index accurately represents small carriers' loop growth, we will reset the cap based on small carriers' cost studies once large carriers move to a forward-looking cost methodology. In addition, carriers may petition the Commission for a waiver to receive additional support should they experience unusual circumstances that require support in excess of the amount distributed.

²³⁰⁷ See *supra* section VII.D.

948. Some commenters support the Joint Board's recommendation to place rural carriers on a protected support mechanism pending the adoption of a forward-looking cost methodology.²³⁰⁸ Many commenters also advocate continuing the existing high cost support mechanisms according to the existing rules.²³⁰⁹ Other commenters, however, offered alternative proposals to modify the existing system based on embedded costs.²³¹⁰ The proposals included: capping support levels; changing the benchmark for high cost loop support to an indexed nationwide average loop cost; maintaining the interstate DEM allocation factor to a historic level; and calculating LTS based on the percentage of the common line pool represented by LTS in 1996. A few commenters, however, suggest placing rural carriers on a forward-looking mechanism immediately.²³¹¹

949. We decline to adopt the Joint Board's recommendation to calculate support for each line based on protected historical amounts at this time because we conclude that such a mechanism would not provide rural carriers adequate support for providing universal service because carriers would not be able to afford prudent facility upgrades. Instead, we adopt the proposal to calculate high cost loop support based on an inflation adjusted nationwide loop cost. We also adopt the proposal to calculate DEM weighting assistance by maintaining the interstate allocation factor defined by the weighted DEM at 1996 levels for each of their study areas. We find, however, that the proposal to calculate LTS based on the percentage of the common line pool represented by LTS in 1996 will not work because we will no longer be able to determine a nationwide CCL charge once the non-pooling carriers switch to per-line, rather than a per-minute, CCL charge. Instead, we adopt a modified form of the Joint Board's recommendation regarding LTS by calculating a rural carrier's LTS support based on the percentage of increase of the nationwide average loop cost because increases in LTS support shall be tied to changes in common line revenue requirements. In order to control the growth of the support mechanisms without impacting an individual carrier disproportionately, we adopt the proposal to cap support levels by continuing to cap the high cost loop support mechanism. We conclude that we should not convert small, rural carriers to an alternative forward-looking cost methodology immediately because the carriers may not be able to absorb a significant change in support levels.

Summary Analysis: Section VIII SUPPORT FOR LOW-INCOME CONSUMERS

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

²³⁰⁸ See *supra* section VII.

²³⁰⁹ See *supra* section VII.

²³¹⁰ See *supra* section VII.

²³¹¹ See *supra* section VII.

950. The state commission shall file or require the carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in the federal rules, and stating the number of qualifying low-income consumers and the amount of state assistance. These recommended reporting and recordkeeping requirements may require clerical and administrative skills.

951. Consumers in participating states who seek to receive Lifeline support shall follow state consumer qualification guidelines. Consumers in non-participating states who seek to receive Lifeline support shall sign a document, provided by the carrier offering Lifeline service, certifying under penalty of perjury that the consumer receives benefits from one of the programs included in the federal default qualification standard. Carriers in non-participating states shall provide consumers seeking Lifeline service with such forms.

952. Carriers can request from their state utilities regulator a period of time during which they may receive universal service support for serving Lifeline consumers while they complete upgrading their switches in order to be able to offer toll-limitation. Carriers may also request from their state utilities regulator a waiver of the requirement prohibiting disconnection of local service for non-payment of toll charges.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

953. Based on the Commission's prior experience administering Lifeline, we find that requiring carriers to keep track of the number of their Lifeline consumers and to file information with the federal universal service Administrator will not impose a significant burden on small carriers since little information is required and the information is generally accessible. Accordingly, we do not anticipate that this requirement will impose a significant burden on small carriers.

**Summary Analysis: Section IX
INSULAR AREAS**

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

954. Section 254(b)(3) establishes the principle that consumers in insular areas should have access to telecommunications and information services that are reasonably comparable, and at rates that are reasonably comparable, to those provided in urban areas. The 1996 Act does not require and we did not establish any new reporting or recordkeeping requirements in this section.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

955. As set forth in section IX.C, we find that residents and carriers in the insular

areas, including the Pacific Island territories, should have access to all the universal service programs, including those for high cost support, low-income assistance, schools, libraries, and rural health care providers. To the extent that they qualify, we conclude that small entities in insular areas will benefit, both as consumers and providers of telecommunications and information services, from such support.

**Summary Analysis: Section X
SCHOOLS AND LIBRARIES**

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

956. We will require service providers to certify to the Administrator that the price offered to schools, libraries, library consortia, or consortia that include schools or libraries is no more than the lowest corresponding price. This requirement is designed to ensure that schools, libraries, and library consortia receive the lowest possible pre-discount price. We also require service providers to keep and retain careful records of how they have allocated the costs of shared facilities used by consortia to ensure that only eligible schools, libraries, and library consortia derive the benefits of discounts under section 254(h) and to ensure that no prohibited resale occurs.

957. We will require, for schools and school districts, that the person responsible for ordering telecommunications and other supported services and facilities certify to the Administrator the percentage of students eligible for the national school lunch program. We also permit schools to use federally approved alternative mechanisms to compute the percentage of students eligible for the national school lunch program. This latter option is particularly helpful to schools that either do not participate in the school lunch program or that have a tradition of undercounting eligible students (e.g., secondary schools, urban schools with highly transient populations, and some rural schools). We require libraries to certify to the percentage of students eligible for the national school lunch program in the school district in which the library is located or to which children would attend public school. This requirement is necessary to enable the Administrator to determine how disadvantaged the entity is and, thus, its eligibility for the greater discounts provided to more disadvantaged entities.

958. We will also require that schools and libraries secure a certification from their state or an independent entity approved by the Commission that they have a technology plan for using the services ordered pursuant to section 254(h). Moreover, we will also require them to certify that they have budgeted sufficient funds, and that such funding will have been approved prior to the start of service, to support all of the costs they will face to use effectively all of the purchases they make under this program. This requirement will help to ensure that schools and libraries avoid the waste that might arise if schools and libraries ordered expensive services before they had other resources needed to use those services effectively.

959. We will require schools, libraries, library consortia, and consortia that include schools or libraries to send a description of the services they are requesting to a subcontractor of the Administrator. The subcontractor will then post a description of the services sought on an Internet website for all potential competing service providers to review. We conclude that this requirement will help achieve Congress's intent that schools and libraries take advantage of the potential for competitive bids. We conclude that the request for service should be signed by the person authorized to order telecommunications and other supported services and facilities for the school, library, or library consortium, certifying the following under oath: (1) the school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for educational purposes; and (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value. If the services are being purchased as part of an aggregated purchase with other entities, schools, libraries, and library consortia will also be required to list the identities of all consortium members. Requiring schools, libraries, library consortia and consortia that include schools or libraries to disclose the identities of consortia members should be minimally burdensome because we only require the institutions to provide basic information, such as the names of all consortia members, addresses, and telephone numbers.

960. We will require schools and libraries, as well as carriers, to maintain records for their purchases of telecommunications and other supported services and facilities at discounted rates, similar to the kinds of procurement records that they already keep for other purchases. We expect that schools and libraries should be able to produce such records at the request of any auditor appointed by a state education department, the Administrator, or any other state or federal agency with jurisdiction to review such records for possible misuse. We conclude carriers should provide notification on the availability of discounts. We find that these reporting and recordkeeping requirements are necessary to ensure that schools and libraries use the discounted telecommunications services for the purposes intended by Congress. For all of these requirements described in this section some administrative, accounting, and clerical skills may be required.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

961. The requirement that service providers certify to the Administrator that the prices they charge to eligible schools, libraries, library consortia, and consortia that include schools or libraries are no more than the lowest corresponding price should be minimally burdensome, given that service providers could be expected to review the prices they charge to similarly situated customers when they set the price for schools and libraries. We reject suggestions to require all carriers to offer services at total service long-run incremental cost levels because of the burdens it would create. Similarly, because schools and libraries that form consortia with non-eligible entities will need to inform the service provider of what portion of shared facilities purchased by the consortia should be charged to eligible schools and libraries (and discounted by the appropriate amounts), it should not be burdensome for carriers to maintain records of those allocations for some appropriate amount of time.

962. With respect to service providers, we reject the suggestion to interpret "geographic area" to mean the entire state in which a service provider serves. This could force service providers to serve areas in a state that they were not previously serving, thereby unreasonably burdening small carriers that were only prepared to serve some small segment of a state. We also reject an annual carrier notification requirement. We conclude that we should only require that carriers provide notification on availability of discounts.

963. Schools and libraries should not be significantly burdened by the requirement that they certify the following: (1) that they are eligible for support under sections 254(h)(4) and 254(h)(5); (2) that the services purchased at a discount are used for educational services; and (3) that those services will not be resold. Assuming that schools and libraries will need to inform carriers about what discount they are eligible to receive, there should be no significant burden imposed by requiring them to certify that they will satisfy the statutory requirements imposed by Congress. Requiring schools, libraries, library consortia and consortia that include schools or libraries to disclose the identities of consortia members should be minimally burdensome because we only require the institutions to provide basic information, such as the names of all consortia members, addresses, and telephone numbers. This information should be readily available to schools, libraries, and library consortia and will be necessary for the Administrator to compile in the event of an audit designed to prevent waste, fraud, and abuse. We note, however, that schools and libraries need not participate in consortia for purposes of the universal service discount program. We conclude that by purchasing as a consortium, individual schools and libraries would be in a better position to take advantage of any price discounts a provider may offer as a result of either efficiencies that it may enjoy from supplying services to a large customer, or from the natural incentives for sellers in a competitive market to offer quantity discounts to large users. We find that the possibility of reaping such benefits will often lead schools and libraries to join consortia despite any attendant administrative burdens.

964. The requirement that schools and libraries submit a description of the services and facilities that they are requesting to the subcontractor of the Administrator should also be minimally burdensome. School and library boards generally require schools and libraries to seek competitive bids for substantial purchases; this forces them to create a description of their purchase needs. We find that it will be minimally burdensome to require schools, libraries, and library consortia to submit a copy of that description to the subcontractor. We further find that this requirement will be much less burdensome than requiring schools and libraries to submit a description of their requests to all telecommunications carriers in their state, as proposed by one commenter. It also will be less burdensome than a requirement that schools and libraries demonstrate that they have participated in a more formal competitive bidding process.

965. We conclude that it will not be unreasonably burdensome to require schools and libraries to secure certification from their state or an independent entity approved by the Commission, that they have undertaken a technology assessment/inventory and adopted a plan for deploying any resources necessary to use their discounted services and facilities

effectively. We expect that few schools or libraries will propose to spend their own money for discounted services until they believe that they could use the services effectively. Therefore, requiring them to secure a certification from an independent expert source that they had done such planning and conducted a technology assessment will be a minimally burdensome way to ensure that schools and libraries are aware of the other resources they need to procure before ordering discounted telecommunications and other supported services and facilities. Furthermore, we observe that the Commission will provide information to schools and libraries lacking information about what resources they may need through a Department of Education website. Although this alternative is more burdensome than the use of a self-certification standard, we find that it is necessary to provide the level of accountability that is in the public interest.

966. We also conclude that the least burdensome manner for schools to demonstrate that they are disadvantaged will be to certify to the Administrator the percentage of students eligible for the national school lunch program in the individual schools or school district because the vast majority of schools already participate in the national student lunch program. We also conclude that allowing schools to use federally approved proxies as a method for computing the percentage of eligible students lessens the administrative burden for schools that either do not participate in the national school lunch program or have a tradition of undercounting eligible students. We also find that requiring libraries to demonstrate their level of disadvantage by relying on national school lunch data for the school district in which they are located provides a reasonable result with a minimal burden. Many libraries urged that they be allowed to use census poverty data, rather than the student lunch eligibility standard. In fact, the ALA volunteered to provide every library with the appropriate poverty level figures, based on the use of a commercially available software program for calculating poverty levels for a 1-mile radius around each library from census data. Those parties, however, failed to provide support for us to conclude that the poverty level in a 1-mile radius of the library was a reasonable approximation of the poverty level for the library's entire service area. Meanwhile, eligible schools and libraries that prefer not to provide information on their levels of economic disadvantage will still qualify for the minimum 20 percent discount on eligible purchases.

967. To foster vigorous competition for serving schools and libraries, we conclude that non-telecommunications carriers must also be permitted to compete to provide these services in conjunction with telecommunications carriers or even their own. Therefore, we encourage non-telecommunications carriers either to enter into partnerships or joint ventures with telecommunications carriers that are not currently serving the areas in which the libraries and schools are located or to offer services on their own. We encourage small businesses both to form such joint ventures and compete on their own.

Summary Analysis: Section XI HEALTH CARE PROVIDERS

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

968. Section 254(h)(1)(A) provides that a telecommunications carrier shall be required to provide rural health care providers with services at rates reasonably comparable to those charged for similar services in urban areas of their state. The providing telecommunications carrier shall then be entitled to universal service support based on the difference, if any, between the rate charged to the health care provider and the rate for similar services provided to other customers in comparable rural areas of the state. We find that every health care provider, including small entities, that makes a request for universal service support for telecommunications services shall be required to submit to the Administrator a written request, signed by an authorized officer of the health care provider, certifying under oath information designed to ensure that universal service support to eligible health care providers is used for its intended purpose and not abused. These requirements may require some administrative, accounting, and legal skills.

969. To minimize the administrative burden on health care providers to the extent consistent with section 254, we adopt the least burdensome certification plan that will provide safeguards that are adequate to ensure that the supported services will be obtained lawfully and for their intended purpose.

970. We are requiring the Administrator to establish and administer a monitoring and evaluation program to oversee the use of supported services by health care providers and the pricing of those services by carriers. Accordingly, health care providers, as well as carriers, will be required to maintain the same kind of procurement records for purchases under this program as they now keep for other purchases involving government programs or third-party payors. Health care providers must be able to produce such records at the request of any auditor appointed by the Administrator or any state or federal agency with jurisdiction that might conduct audits. Health care providers may be subject to random compliance audits to ensure that services are being used for the provision of state authorized health care, that they are complying with other certification requirements, that they are otherwise eligible to receive universal service support, that rates charged comply with the statute and regulations and that prohibitions against resale or transfer for profit are strictly enforced, particularly with respect to consortia. Such information will permit the Commission to determine whether universal service support policies require adjustment. The Administrator shall also develop a method for obtaining information from health care providers regarding which services they are purchasing and how such services are being used, and shall submit an annual report to the Commission. This report will enable the Commission to monitor the progress of health care providers in obtaining access to telecommunications and other information services.

971. We encourage carriers across the country to notify eligible health care providers in their service areas of the availability of lower rates resulting from universal service support so that rural health care providers are able to take full advantage of the supported services.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

972. We have considered several certification plans suggested by commenters. We seek to adopt the least burdensome certification plan that will provide adequate safeguards to ensure that the supported services are being used for their intended purpose. We reject a suggestion that certification include verification of the existence of a technology plan and a checklist of other information for tracking universal service. Although such plans might be useful in a discount plan where disincentives to overpurchasing are needed, we find that such a requirement will be unnecessarily burdensome where health care providers, many of whom may be small entities, would be required to invest substantial resources in order to pay urban rates for these services. We also reject, for similar reasons, suggestions that health care providers be required to certify that hardware, wiring, on-site networking, and training would be deployed simultaneously with the service. Finally, we reject a proposal that the financial officers of health care provider organizations be required to attest under oath that funds have been used as intended by the 1996 Act, because we find that the pre-expenditure certification described above, which will be submitted to the carrier along with the request for services, is sufficient under these circumstances.

973. To minimize the administrative burden on regulators and carriers, to the extent consistent with section 254, we find that the urban rate should be based on the rates charged for similar services in the urban area with a population of at least 50,000 closest to the health care provider's location. We conclude that this one-step process will be easy to use and understand and will, therefore, be less administratively burdensome than other possible approaches. This method is also preferable to one that would require information about private contract rates, which are proprietary and cannot be obtained without elaborate confidentiality safeguards.

974. We acknowledge the concern of some commenters that requiring carriers to treat the amount of support for health care providers as an offset to the carrier's universal service obligation is anti-competitive for small carriers that have such small funding obligations that they would not receive the full offset to which they were entitled in the current year. Therefore, while we adopt the Joint Board's recommendation to limit carriers to offsets rather than direct reimbursement for the first year's service, we also adopt modifications to reflect these concerns. Although we disagree with NYNEX's suggestion that the statute precludes a mandatory offset rule, we conclude that allowing direct compensation under some circumstances is consistent with the statutory language and sound policy. We conclude that telecommunications carriers providing services to health care providers at reasonably comparable rates under the provisions of section 254(h)(1)(A) should treat the amount eligible for support as an offset toward the carrier's universal service support obligation for the year in which the expenses were incurred. To the extent that the amount of universal service support due to a carrier exceeds the carrier's universal service obligation, calculated on an annual basis, however, we find that the carrier may receive a direct reimbursement in the amount of the difference.

975. This approach should address the potential problem when the total amount of a carrier's rate reductions exceed its universal service obligation in any one year. Moreover,

allowing carriers to receive direct reimbursements should help ensure that they have adequate resources to cover the costs of providing supported services. As some commenters suggest, small carriers will find it difficult to sustain such costs absent prompt reimbursement. Pursuant to this approach, those small carriers who do not contribute to the universal service fund because they are subject to the *de minimis* exemption may receive direct reimbursement as well. We agree with the Joint Board that an offset mechanism is both less vulnerable to manipulation and more easily administered and monitored than direct reimbursement. We conclude, however, that the approach we adopt appropriately balances the concerns of carriers whose rate reductions exceed their contributions in a given year against the need to adopt a reimbursement method that may be easily administered and monitored.

976. To identify rural health care providers, we adopt the Office of Management and Budget's Metropolitan Statistical Area method of designating rural areas along with the Goldsmith Modification because it will meet the "ease of administration" criterion. Since lists of MSA counties and Goldsmith-identified census blocks and tracts already exist, updated to 1995, it should be relatively easy for any health care provider to determine if it is located in a rural area and, therefore, whether it will meet the test of eligibility for support.

Summary Analysis: Section XII

SUBSCRIBER LINE CHARGES AND CARRIER COMMON LINE CHARGES

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

977. The Commission's universal service rules regarding the interstate subscriber line charge and carrier common line charges will not impose any additional reporting requirements on any entities, including small entities. Although we changed the amount of the charges, the changes will have no impact on the information collection requirement, and will not extend the charges to additional carriers. Some accounting skills may be necessary to modify the charges.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

978. Because the SLC and CCL charges will recover ILECs' costs for portions of their network, reporting requirements were deemed necessary to track the costs and allow for their recovery. No alternatives were presented that would have eliminated or substantially reduced those reporting requirements. The Commission's findings have no impact on the information collection requirement and will not extend the charges to any additional carriers.

979. We note, in section XII.C, that some commenters suggest that the SLC cap for businesses with single connections be raised above the \$3.50 cap. We reject this suggestion noting that the SLC charge is assessed directly on local telephone subscribers and, therefore, has an impact on universal service concerns such as affordability of rates. We do not agree with the SBA that the SLC should be reduced for businesses with multiple connections.

While not all businesses with multiple connections may be large corporations, we conclude that such businesses have demonstrated that telecommunication services are affordable by subscribing to multiple connections. We are also concerned that a reduction in SLC caps would have a negative impact on the economic efficiency of the Commission's common line recovery regime. We conclude that a reduction in the SLC cap for businesses with multiple connections is not warranted at this time.

Summary Analysis: Section XIII ADMINISTRATION

Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.

980. Section 254(d) states "that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions" toward the preservation and advancement of universal service. We shall require all telecommunications carriers that provide interstate telecommunications services and some providers of interstate telecommunications to contribute to the universal service support mechanisms. Contributions for support for programs for high cost areas and low-income consumers will be assessed on the basis of interstate and international end-user telecommunications revenues. Contributions for support for programs for schools, libraries, and rural health care providers will be assessed on the basis of interstate, intrastate, and international end-user telecommunications revenues. Contributors will be required to submit information regarding their end-user telecommunications revenues. Approximately 5,000 telecommunications carriers and providers will be required to submit contributions. These tasks may require some administrative, accounting, and legal skills.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

981. We reject the suggestion of some commenters that CMRS providers, many of whom may qualify as small businesses, should not be required to contribute, or should be allowed to contribute at a reduced rate, due to their contention that they will not be eligible to receive universal service support. We note that section 254(d) provides that "every telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis" with no such exemption for any CMRS providers or ineligible carriers.²³¹² We find, however, that entities that provide only international telecommunications services are not required to contribute to universal service support because they are not "telecommunications carriers that provide interstate telecommunications."²³¹³ To the extent that small carriers provide only international telecommunications service, they will not be required to contribute to the universal service

²³¹² 47 U.S.C. § 254(d).

²³¹³ See *infra* section XIII.B.2.

support mechanisms.

982. As set forth in section XIII.D, we conclude that small carriers should not be given preferential treatment in the determination of contributions to the universal service support mechanisms solely on the basis of being small entities because of section 254(d)'s explicit directive that every telecommunications carrier that provides interstate telecommunications services shall contribute to the preservation and advancement of universal service. We have considered the suggestions of commenters regarding various graduated contribution schemes that would favor small entities. We reject these suggestions based on the language of the statute, legislative history, and the regulatory burdens that such graduated schemes would entail. We have considered commenter suggestions that small carriers be exempted from contribution on the basis of the *de minimis* provision of section 254(d). We reject these suggestions on the basis of the legislative history surrounding section 254(d) that provides that the *de minimis* exemption should be limited to those carriers for whom the cost of collecting the contribution exceeds the amount of the contribution.²³¹⁴ As set forth in section XIII.D, we find that if a contributor's contribution to universal service in any given year is less than \$100.00, that contributor will not be required to submit a contribution for that year. We conclude that expanding the definition of *de minimis* to include "small" carriers would violate the "pro-competitive" intent of the 1996 Act and require complex administration and regulation to determine and monitor eligibility for the exemption. We believe that small entities may benefit under the *de minimis* exemption as interpreted in the Order without an explicit exemption for all small entities. We also believe that small payphone aggregators, such as grocery store owners, will be exempt from contribution requirements pursuant to our *de minimis* exemption.

E. Report to Congress

983. The Commission shall send a copy of this FRFA, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy or a summary of this FRFA will also be published in the Federal Register.

²³¹⁴ Joint Explanatory Statement at 131.