

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

In the Matter of)
Telephone Number Requirements for IP-Enabled Services Providers) WC Docket No. 07-243
Local Number Portability Porting Interval and Validation Requirements) WC Docket No. 07-244
IP-Enabled Services) WC Docket No. 04-36
Telephone Number Portability) CC Docket No. 95-116
CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues)
Final Regulatory Flexibility Analysis)
Numbering Resource Optimization) CC Docket No. 99-200

REPORT AND ORDER, DECLARATORY RULING, ORDER ON REMAND, AND NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Martin and Commissioners Copps, Tate and McDowell issuing separate statements; Commissioner Adelstein approving in part, concurring in part and issuing a statement.

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I. INTRODUCTION

1. In this Order, we take a series of steps designed to ensure that consumers benefit from local number portability (LNP). First, we extend LNP obligations to interconnected voice over Internet Protocol (VoIP) providers to ensure that customers of such VoIP providers may port their North American Numbering Plan (NANP) telephone numbers when changing telephone providers.¹ Consumers will now be able to take advantage of new telephone services without losing their telephone numbers, which should in turn facilitate greater competition among telephony providers by allowing customers to respond to price and service changes. Additionally, we extend to interconnected VoIP providers the obligation to contribute to shared numbering administration costs. We believe that these steps we take to ensure regulatory parity among providers of similar services will minimize marketplace distortions arising from regulatory advantage.

2. Second, we address the petition for declaratory ruling filed jointly by T-Mobile USA, Inc. and Sprint Nextel Corporation (collectively, Petitioners) seeking clarification regarding certain LNP obligations.² Specifically, we clarify that no entities obligated to provide LNP may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer's request. In particular, we conclude that LNP validation should be based on no more than four fields for simple ports, and that those fields should be: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable).

¹ 47 U.S.C. § 251(b)(2); 47 C.F.R. §§ 52.20 *et seq.* The NANP is the basic numbering scheme that permits interoperable telecommunications service within the United States, Canada, Bermuda, and most of the Caribbean. *See Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2590, para. 3 (1995) (*NANP Order*).

² Petition for Declaratory Rulemaking filed by T-Mobile USA, Inc. and Sprint Nextel Corporation, CC Docket No. 95-116 (filed Dec. 20, 2006) (T-Mobile/Sprint Nextel Petition).

3. Third, we respond to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stay of the Commission's 2003 *Intermodal Number Portability Order*³ as applied to carriers that qualify as small entities under the Regulatory Flexibility Act (RFA) by preparing a Final Regulatory Flexibility Analysis (FRFA) on the impact of the wireline-to-wireless intermodal LNP rules on wireline carriers qualifying as small entities under the RFA.⁴ After considering information received from commenters in response to an Initial Regulatory Flexibility Analysis (IRFA), we find, consistent with the Commission's 2003 *Intermodal Number Portability Order*, that wireline carriers qualifying as small entities under the RFA should be required to port to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. We find that this approach best balances the impact of the costs that may be associated with the wireline-to-wireless intermodal porting rules for small carriers and the public interest benefits of those requirements.

4. Fourth, we seek comment in a Notice of Proposed Rulemaking (Notice) on whether the Commission should address other LNP and numbering obligations. Specifically, we seek comment on whether the Commission should extend other LNP requirements and numbering-related rules, including compliance with N11 code assignments, to interconnected VoIP providers. We also seek comment on whether the Commission should adopt rules specifying the length of the porting intervals or other details of the porting process. We also tentatively conclude that the Commission should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically, to a 48-hour porting interval.

II. BACKGROUND

A. Local Number Portability and Numbering Administration

5. *Statutory Authority.* Section 251(e) of the Communications Act of 1934, as amended (Act), gives the Commission plenary jurisdiction over the NANP and related telephone numbering issues in the United States.⁵ Further, section 251(e)(2) states that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."⁶ Section 251(b)(2) of the Act requires local exchange carriers (LECs) to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."⁷ The Act and the Commission's rules define number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁸ As discussed below, the Commission adopted LNP rules and cost recovery mechanisms to implement these congressional mandates.

³ See *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (2003) (*Intermodal Number Portability Order* or *Intermodal Number Portability FNPRM*).

⁴ *United States Telecom Ass'n v. FCC*, 400 F.3d 29, 43 (D.C. Cir. 2005); see 5 U.S.C. §§ 601 *et seq.* (Regulatory Flexibility Act).

⁵ 47 U.S.C. § 251(e).

⁶ 47 U.S.C. § 251(e)(2).

⁷ 47 U.S.C. § 251(b)(2).

⁸ 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l). The Commission has interpreted this language to mean that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them. See *Telephone Number Portability; Carrier Requests for Clarification of*

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6. *LNP Orders.* In 1996, the Commission required all carriers, including wireline carriers and covered commercial mobile radio service (CMRS) providers, operating in the 100 largest Metropolitan Statistical Areas (MSAs) to provide service provider portability according to a phased deployment schedule.⁹ The Commission found that LNP provided end users options when choosing among telecommunications service providers without having to change their telephone numbers.¹⁰ In that order, the Commission established obligations for porting between wireline carriers, porting between wireless providers, and intermodal porting (*i.e.*, the porting of numbers from wireline carriers to wireless providers, and *vice versa*), and directed the North American Numbering Council (NANC) to make recommendations regarding specific LNP implementation issues.¹¹

7. On August 14, 1997, the Commission adopted the NANC's recommendations for the implementation of wireline-to-wireline LNP.¹² Among other things, the NANC guidelines limited wireline-to-wireline number porting to carriers with facilities or numbering resources in the same rate center.¹³ On October 7, 2003, the Commission released the *Wireless Number Portability Order*, offering

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Wireless-Wireless Porting Issues, CC Docket No. 95-116, Memorandum Opinion and Order, 18 FCC Rcd 20971, 20975, para. 11 (2003) (*Wireless Number Portability Order*), *aff'd*, *Cent. Tex. Tel. Coop. v. FCC*, 402 F.3d 205 (D.C. Cir. 2005).

⁹ See *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8393, para. 77 (1996) (*First Number Portability Order*); see also *Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7272, para. 59 (1997) (*First Number Portability Order on Reconsideration*) (concluding that LECs and covered CMRS providers were required only to deploy LNP to switches for which another carrier has made a specific request for the provision of LNP). "Service provider portability" is synonymous with the definition in section 3(30) of the Act for number portability, that is "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." *First Number Portability Order*, 11 FCC Rcd at 8366-67, para. 27 (citing 47 U.S.C. § 153(30)). The Commission also defined two other forms of portability in the *First Number Portability Order*: (1) service portability; and (2) location portability. See *id.* at 8443-44, paras. 173-74. "Service portability" is the switching of telephone numbers because a particular service may be only available through a particular switch. See *id.* at 8443, para. 173. "Location portability" is "the ability of users of telecommunications services to retain existing telecommunications numbers . . . when moving from one physical location to another." *Id.* at 8443, para. 174. The Commission determined that it was not in the public interest at that time to require LECs to offer service or location portability. See *id.* at 8447-49, paras. 181-87.

¹⁰ See *First Number Portability Order*, 11 FCC Rcd at 8368, para. 30.

¹¹ See *id.* at 8401, 8431, 8433, 8440, paras. 93, 152, 155, 166. Although the Act excludes CMRS providers from the statutory definition of "local exchange carrier," the Commission extended the LNP obligations to CMRS providers under its independent authority in sections 1, 2, 4(i) and 332 of the Act. See *id.* at 8431, para. 153. The Commission found that sections 2 and 332(c)(1) of the Act allow the Commission to regulate CMRS providers as common carriers. Further, section 1 of the Act requires the Commission to "make available . . . to all people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service," and thus the Commission has an interest in a uniform number portability framework. See *id.* Additionally, section 4(i) of the Act grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act] as may be necessary in the execution of its functions." *Id.* Thus, the Commission concluded that requiring covered CMRS providers to adhere to LNP obligations was in the public interest because it promoted competition between providers of local telephone services, and thereby promoted competition between providers of interstate access services. See *id.* at 8432, 8434-37, paras. 153, 157-60.

¹² See *Telephone Number Portability*, CC Docket No. 95-116, RM-8535, Second Report and Order, 12 FCC Rcd 12281 (1997) (*Second Number Portability Order*).

¹³ See *Second Number Portability Order*, 12 FCC Rcd at 12283, para. 3; North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, App. D at 6 (rel. Apr. 25, 1997). A "rate center" is a geographic area that is used to determine whether a call is local or toll. See FCC

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further guidance on wireless LNP. In particular, the Commission prohibited provisions in consumer contracts that purport to limit porting between carriers.¹⁴ It also found that in terms of the validation process for wireless-to-wireless number porting, absent an agreement setting additional terms, carriers only had to share basic contract and technical information with each other sufficient to perform the port.¹⁵ The Commission also declined to limit wireless-to-wireless porting based on wireline rate centers because it would limit a consumer's ability to port numbers among wireless carriers.¹⁶

8. In its 2003 *Intermodal Number Portability Order*, the Commission provided guidance on porting between wireline and wireless carriers.¹⁷ Specifically, the Commission decided that wireline carriers must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps with the geographic location of the customer's wireline rate center so long as the porting-in wireless carrier maintained the number's original rate center designation following the port.¹⁸ Additionally, the Commission reaffirmed that wireless carriers must port numbers to wireline carriers within a number's originating rate center.¹⁹ Further, the Commission clarified that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting because the porting process "can be discharged with a minimal exchange of information."²⁰ On appeal, the D.C.

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Clears Way for Local Number Portability Between Wireline and Wireless Carriers, CC Docket No. 95-116, News Release (rel. Nov. 10, 2003).

¹⁴ See *Wireless Number Portability Order*, 18 FCC Rcd at 20976, para. 15.

¹⁵ See *id.* at 20978, para. 24.

¹⁶ See *id.* at 20978, para. 22. The Commission declined to address rating and routing issues raised by rural wireless carriers, finding that they were outside the scope of the order because the requirements of the Commission's wireless LNP rules on wireless carriers do not vary depending on how calls to the number will be rated and routed after the port occurs. See *id.* at 20978, para. 23.

¹⁷ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22, *remanded*, *U.S. Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005) (finding that the *Intermodal Number Portability Order* was a legislative rule, remanding the order to prepare a FRFA, and staying future enforcement of the order against small entities until the Commission published a FRFA). On April 22, 2005, the Commission issued a Public Notice seeking comment on an IRFA of the *Intermodal Number Portability Order*. See *Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, Public Notice, 20 FCC Rcd 8616 (2005) (*IRFA Public Notice*); 70 Fed. Reg. 41655 (July 20, 2005). In the *IRFA Public Notice*, the Commission described and sought comment on the potential compliance burdens associated with the wireline-to-wireless intermodal LNP rules and discussed the significant alternatives it had considered before adopting the *Intermodal Number Portability Order*. See *IRFA Public Notice*, 20 FCC Rcd 8616.

¹⁸ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22. A wireless carrier's coverage area is the "area in which wireless service can be received from the wireless carrier." *Id.* at 23698, para. 1. The Commission rejected the argument that it imposed a location portability duty on carriers because the number must retain its original rate center designation, *i.e.*, the number remains at the same location despite the fact that a wireless subscriber may travel outside a rate center and make calls without incurring toll charges. See *id.* at 23708-09, para. 28; *Cent. Tex. Tel. Coop. v. FCC*, 402 F.3d at 207. The Commission also found that nothing in its rules requires a wireless carrier to have a physical point of interconnection or numbering resources in the rate center where the number is assigned. See *Intermodal Number Portability Order*, 18 FCC Rcd at 23698, para. 1.

¹⁹ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22.

²⁰ *Id.* at 23711-12, paras. 34-37. The Commission also sought comment on how to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer. *Id.* at 23714, para. 42.

Circuit remanded the *Intermodal Number Portability Order* and stayed its enforcement against small entities until the Commission published a FRFA.²¹

9. In a parallel set of orders, the Commission adopted rules governing LNP cost recovery under section 251(e)(2). Such costs include the industry-wide costs that make it possible to route calls to customers who have switched carriers as well as the costs individual providers incur to make it possible to transfer a telephone number to another carrier. In the *Cost Recovery Order*, the Commission determined that all telecommunications carriers should bear certain costs of creating and supporting LNP on a competitively neutral basis under the mandate of section 251(e)(2).²² The Commission found that because all carriers – including interexchange carriers and CMRS providers – incur LNP costs, it was reasonable to interpret section 251(e)(2) as requiring that LNP costs should be borne on a competitively neutral basis by all carriers, rather than just a subset of the industry.²³

10. To allocate shared costs, the Commission directed the LNP regional database administrator (LNPA) to distribute the shared costs of each LNP regional database among all telecommunications carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.²⁴ In the *Cost Recovery Reconsideration Order*, the Commission recognized that national and multi-regional carriers may face some inherent difficulties in determining end-user revenue by regional database area and thus adopted a proxy mechanism by which such carriers may allocate their revenues among the seven LNPA regions.²⁵ For carrier-specific costs, the Commission regulated the specific manner in which incumbent LECs could recover certain LNP costs and permitted other telecommunications carriers to recover such costs in any lawful manner.²⁶

²¹ See *U.S. Telecom Ass'n v. FCC*, 400 F.3d at 43.

²² See *Telephone Number Portability Order*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11706, para. 8 (1998) (*Cost Recovery Order*), *aff'd*, *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (*Cost Recovery Reconsideration Order*). The Commission divided the costs produced by number portability into three categories: (1) shared costs; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to providing number portability. See *Cost Recovery Order*, 13 FCC Rcd at 11738-41, paras. 68-77. Carriers are permitted to recover costs for shared costs and carrier-specific costs directly related to providing number portability through federal LNP charges, but are not so permitted to recover carrier-specific costs not directly related to providing number portability. See *Cost Recovery Order*, 13 FCC Rcd at 11740, para. 74; see also *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116, RM 8535, 13 FCC Rcd 24495, 24499, para. 6 (WCB 1998) (stating that the *Cost Recovery Order* expressly specified that some of the costs LECs incur as a consequence of number portability are not "eligible" for recovery through the federal LNP charges established in that order, as the ordinary cost recovery mechanisms already generally provide LECs with the opportunity to recover costs incurred in modernizing their networks to keep pace with technological and market developments).

²³ See *Cost Recovery Order*, 13 FCC Rcd at 11723-24, para. 36.

²⁴ 47 C.F.R. § 52.32. The Commission applied its two-part competitive neutrality test to determine that shared costs should be spread among the carriers based on each carrier's intrastate, interstate, and international end-user telecommunications revenues for the different regional database regions. See *Cost Recovery Order*, 13 FCC Rcd at 11745-46, 11754-57, 11759, 11761, 11763, paras. 87-92, 105-10, 113-14, 116-17, 119. The Commission adopted its competitive neutrality test in the *First Number Portability Order*, determining that the way the carriers bear the costs of number portability: (1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber; and (2) must not disparately affect the ability of competing service providers to earn a normal return. See *First Number Portability Order*, 11 FCC Rcd at 8419-21, paras. 131-35.

²⁵ See *Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2597-98, paras. 37-38.

²⁶ See *Cost Recovery Order*, 13 FCC Rcd at 11725-26, 11773-80, paras. 39, 135-49; 47 C.F.R. § 52.33.

11. *Numbering Administration Orders.* Similar to the LNP cost recovery mechanisms established under section 251(e)(2), the Commission also established a cost recovery mechanism for the NANP administration.²⁷ The Commission determined that the NANP administration costs should be borne by those that benefit from numbering resources.²⁸ This cost recovery system is also based on end-user telecommunications revenues because the Commission determined that doing so satisfied section 251's directive that cost recovery should be competitively neutral.²⁹ For thousands block number pooling costs, a subset of numbering administration costs, the Commission divided costs into three different types, similar to the LNP cost recovery mechanism, finding that shared costs should be allocated to all telecommunications carriers in proportion to each carrier's interstate, intrastate, and international telecommunication end-user revenues, and that related carrier-specific costs of carriers not subject to rate regulation could be recovered in any lawful manner.³⁰

B. Interconnected VoIP Services

12. Interconnected VoIP service enables users, over their broadband connections, to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN.³¹ In order to have this capability, an interconnected VoIP service must offer consumers NANP telephone numbers.³² Interconnected VoIP providers generally obtain NANP telephone numbers for their customers by partnering with a local exchange carrier (LEC) through a commercial arrangement rather than obtaining them directly from the numbering administrator, which provides numbers only to entities that are licensed or certificated as carriers under the Act.³³ Consumers and telecommunications carriers

²⁷ See *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2627-28, para. 94 (1995) (*NANP Order*); see also *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7662, para. 192 (2000) (finding that thousands-block number pooling is a numbering administration function that is subject to the Commission's authority under section 251(e)(2)) (*First Numbering Order*).

²⁸ See *NANP Order*, 11 FCC Rcd at 2628, para. 95.

²⁹ See *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602, 16630-31, paras. 59, 61 (1999).

³⁰ See *First Numbering Order*, 15 FCC Rcd at 7665-70, paras. 201-11; *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 99-200, 96-98, 95-116, Third Report and Order and Second Order on Reconsideration, CC Docket Nos. 96-98 and 99-200, 17 FCC Rcd 252, 264-65, 268, paras. 24-25, 32 (2001) (*Third Numbering Order*). The Commission found that carrier-specific costs not directly related to thousands-block pooling implementation, the third category of costs, are not subject to the competitive neutrality requirements in section 251(e)(2). As such, carriers are not allowed to recover carrier-specific costs not directly related to thousands-block number pooling implementation and administration through the cost recovery mechanism established by the Commission. See *First Numbering Order*, 15 FCC Rcd at 7670, para. 211.

³¹ See 47 C.F.R. § 9.3 (defining “interconnected VoIP service” as “a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network”); see also *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (2005) (*VoIP 911 Order*), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); 47 C.F.R. § 54.5 (defining “interconnected VoIP provider”).

³² See, e.g., Comcast Comments, WC Docket No. 04-36, at 7; SBC Comments, WC Docket No. 04-36, at 84.

³³ See 47 C.F.R. § 52.15(g)(2)(i); see also *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7615, para. 97 (2000) (*NRO First Report and*

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have complained to the Commission on numerous occasions regarding an inability to port in or port out a NANP telephone number to or from an interconnected VoIP provider.³⁴

13. On March 10, 2004, the Commission initiated a proceeding to examine issues relating to Internet Protocol (IP)-enabled services – services and applications making use of IP, including, but not limited to, VoIP services.³⁵ In the *IP-Enabled Services Notice*, the Commission sought comment on, among other things, whether to extend the obligation to provide LNP to any class of IP-enabled service provider.³⁶ The Commission also sought comment on whether the Commission should take any action to facilitate the growth of IP-enabled services, while at the same time maximizing the use and life of the NANP numbering resources.³⁷

14. On four occasions, the Commission has extended certain Title II obligations to interconnected VoIP providers.³⁸ On May 19, 2005, the Commission asserted its ancillary jurisdiction under Title I of the Act and its authority under section 251(e) to require interconnected VoIP providers to

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Order) (requiring carriers seeking direct access to numbering resources to provide evidence that they are authorized to provide service, such as by submitting a state certification as a carrier).

³⁴ See, e.g., Marvin Nicholson Comments, WC Docket No. 04-36, at 1; Minnesota Commission Comments, WC Docket No. 04-36, at 3; Brief Comment of Syed Faisal Afzaal, WC Docket No. 04-36 (filed Mar. 27, 2006); Brief Comment of Rich Robins, WC Docket No. 04-36 (filed Mar. 14, 2006); Brief Comment of Bryan Miller, WC Docket No. 04-36 (filed Nov. 11, 2005); Letter from John T. Nakahata, Counsel for Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 96-98, WC Docket No. 04-36, at 1 (filed Feb. 23, 2007) (Level 3 Feb. 23, 2007 *Ex Parte* Letter); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3521-22, para. 16 (WCB 2007) (*Time Warner Cable Order*) (finding that it is consistent with Commission policy that when a LEC wins back a customer from a VoIP provider, the number should be ported to the LEC that wins the customer). *But see* Vonage Reply, WC Docket No. 04-36, at 24 (disputing the Minnesota Commission's contention that Vonage will not port numbers out).

³⁵ See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services Notice*). Comments were filed by May 28, 2004 and reply comments were filed by July 14, 2004. See *Pleading Cycle Established for Comments in IP-Enabled Services Rulemaking Proceeding*, WC Docket No. 04-36, Public Notice, 19 FCC Rcd 5589 (2004); *Wireline Competition Bureau Extends Reply Comment Deadlines for IP-Enabled Services Rulemaking and SBC's "IP Platform Services" Forbearance Petition*, WC Docket Nos. 04-29, 04-36, Public Notice, 19 FCC Rcd 10474 (2004); see also Appendix A (List of Commenters).

³⁶ *IP-Enabled Services Notice*, 19 FCC Rcd at 4911-12, para. 73.

³⁷ See *id.* at 4914, para. 76. As the Commission observed in seeking comment on the numbering implications of IP-enabled services, those issues had been raised and discussed before the NANC through industry meetings and white papers. See *id.* at 4914, para. 76 n.226 (citing, among other things, BellSouth *et al.*, *VoIP Numbering Issues*, http://www.nanc-chair.org/docs/Nov/Nov02_VoIP_White_Paper.doc (visited Feb. 7, 2004) (discussing numbering issues related to VoIP, including LNP)).

³⁸ Additionally, on August 5, 2005, the Commission determined that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act (CALEA). See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005) (*CALEA First Report and Order*), *aff'd*, *Am. Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006). Under its Title I ancillary jurisdiction, the Commission has also required interconnected VoIP providers to pay Fiscal Year 2007 regulatory fees based on revenues reported on the FCC Form 499-A at the same rate as interstate telecommunications service providers. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-140, paras. 11-13 (rel. Aug. 6, 2007).

supply 911 emergency calling capabilities to their customers.³⁹ On June 21, 2006, the Commission in the *2006 Interim Contribution Methodology Order*, among other things, established universal service contribution obligations for interconnected VoIP providers based on its permissive authority under section 254(d) and its ancillary jurisdiction under Title I of the Act.⁴⁰ On March 13, 2007, the Commission extended section 222's customer proprietary network information obligations to interconnected VoIP providers using its Title I authority.⁴¹ Most recently, on June 15, 2007, the Commission, using its Title I authority, extended the disability access requirements under section 255 to providers of interconnected VoIP services and to manufacturers of specially designed equipment used to provide these services.⁴² The Commission also extended the Telecommunications Relay Services (TRS) requirements to providers of interconnected VoIP services, pursuant to section 225(b)(1) of the Act and its Title I jurisdiction, including requiring interconnected VoIP providers to contribute to the Interstate TRS Fund under the Commission's existing contribution rules and offer 711 abbreviated dialing for access to relay services.⁴³

C. T-Mobile USA, Inc. and Sprint Nextel Petition

15. On December 20, 2006, the Petitioners filed a petition for declaratory ruling, pursuant to section 1.2 of the Commission's rules, requesting that the Commission make clear that carriers obligated to provide LNP may not obstruct or delay the porting process by demanding information from requesting carriers beyond that required to validate the customer request.⁴⁴ Petitioners maintain that some carriers request excessive amounts of information as part of the porting process, creating significantly longer times for ports and a correspondingly higher number of intermodal port request cancellations.⁴⁵ To improve the validation process, the Petitioners recommend validating port requests using just four data

³⁹ See *VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1.

⁴⁰ See *Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

⁴¹ See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57, paras. 54-59 (2007) (*CPNI Order*).

⁴² See *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11283-291, paras. 17-31 (2007) (*TRS Order*).

⁴³ See *id.* at paras. 32-43. TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables a person with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users through a relay provider and a Communications Assistant. See 47 U.S.C. § 225(a)(3); see also 47 C.F.R. § 64.601(14) (defining TRS).

⁴⁴ See T-Mobile/Sprint Nextel Petition at 1.

⁴⁵ See *id.* at 3-6; see also, e.g., CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (stating that customers frequently cancel port requests after needless delays); Iowa Utilities Board Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007) (arguing that LEC validation procedures may be contributing to number exhaust because customers are forced to request new telephone numbers rather than be able to port); MetroPCS Comments, CC Docket No. 95-116, at 5 (filed Feb. 8, 2007) (stating that many customers are abandoning their landline numbers rather than porting to avoid porting process delays); PCIA Comments, CC Docket No. 95-116, at 1 (filed Feb. 7, 2007) (stating that the efficiency of the process is critical to its success).

fields: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable).⁴⁶ The Commission issued a public notice seeking comment on the petition.⁴⁷

III. DISCUSSION

16. In this Order, we undertake several steps to help ensure that consumers and competition benefit from LNP as intended by the Act and Commission precedent. First, we extend LNP obligations and numbering administration support obligations to encompass interconnected VoIP services. Second, we clarify that no entities obligated to provide LNP may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer's request. In particular, we conclude that LNP validation should be based on no more than four fields for simple ports, and that those fields should be: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable). Third, we issue a FRFA in response to the D.C. Circuit's stay of the Commission's *Intermodal Number Portability Order* and find that wireline carriers qualifying as small entities under the RFA should be required to port to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. Fourth, as discussed below, we seek comment in the Notice on the need for Commission action regarding other LNP and numbering obligations.

A. Interconnected VoIP Services

17. We find that the customers of interconnected VoIP services should receive the benefits of LNP. Such action is fundamentally important for the protection of consumers and is consistent with the authority granted to the Commission under section 251(e) and sections 1 and 2 of the Act. Moreover, as described below, by requiring interconnected VoIP providers and their numbering partners to ensure that users of interconnected VoIP services have the ability to port their telephone numbers when changing service providers to or from an interconnected VoIP provider, we benefit not only customers but the interconnected VoIP providers themselves.⁴⁸ Specifically, the ability of end users to retain their NANP telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of services they can choose to purchase. Allowing customers to respond to price and service changes without changing their telephone numbers will enhance competition, a fundamental goal of section 251 of the Act, while helping to fulfill the Act's goal of facilitating "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."⁴⁹ Additionally, we extend to interconnected VoIP providers the obligation to contribute to shared numbering administration costs. We believe that the steps we take today to ensure regulatory parity among providers of similar services will minimize marketplace distortions arising from regulatory advantage.

1. Scope

18. Consistent with our previous decisions in the *IP-Enabled Services* proceeding, we limit our decision to interconnected VoIP providers, in part because, unlike certain other IP-enabled services, we

⁴⁶ See T-Mobile/Sprint Nextel Petition at 7.

⁴⁷ See *Pleading Cycle Established for Comments on T-Mobile USA, Inc. and Sprint Nextel Corporation's Petition for Declaratory Ruling Regarding Number Portability*, WC [sic] Docket No. 95-116, Public Notice, 22 FCC Rcd 190 (2007). A list of the commenters to the Public Notice is attached as Appendix A to this Order.

⁴⁸ By "numbering partner," we mean the carrier from which an interconnected VoIP provider obtains numbering resources. See generally *infra* at para. 20.

⁴⁹ 47 U.S.C. § 151.

continue to believe that interconnected VoIP service “is increasingly used to replace analog voice service,” including, in some cases, local exchange service.⁵⁰ Indeed, as interconnected VoIP service improves and proliferates, consumers’ expectations for these services trend toward their expectations for other telephone services. Thus, consumers reasonably expect interconnected VoIP services to include regulatory protections such as emergency 911 service and LNP.⁵¹

19. These characteristics of interconnected VoIP service support a finding that it is appropriate to extend LNP obligations to include such services, in light of the statute and Commission precedent. Congress expressly directed the Commission to prescribe requirements that all LECs must meet to satisfy their statutory LNP obligations.⁵² In doing so, the Commission has required service providers that have not been found to be LECs but that are expected to compete against LECs to comply with the LNP obligations set forth in section 251(b)(2).⁵³ In extending LNP rules to such providers, the Commission concluded, among other things, that imposing such obligations would “promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services.”⁵⁴ Specifically, the Commission found that the availability of LNP would “eliminat[e] one major disincentive to switch carriers,” and thus would facilitate “the successful entrance of new service providers” covered by the LNP rules.⁵⁵ Indeed, the Commission determined that LNP not only would facilitate competition between such new service providers and wireline telecommunications carriers, but also would facilitate competition among the new service providers themselves.⁵⁶ The Commission anticipated that the enhanced competition resulting from LNP would “stimulate the development of new services and technologies, and create incentives for carriers to lower prices and costs.”⁵⁷ The Commission further concluded that implementation of long-term LNP by these providers would help ensure “efficient use and uniform administration” of numbering resources.⁵⁸ For these same policy reasons, we extend the LNP obligations to interconnected VoIP providers.

⁵⁰ See *CPNI Order*, 22 FCC Rcd at 6956, para. 56; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7541, para. 44; see also *VoIP 911 Order*, 20 FCC Rcd at 10256, para. 23. As noted above, in the *IP-Enabled Services Notice*, the Commission sought comment on whether to extend the LNP obligations to any class of IP-enabled service providers. See *IP-Enabled Services Notice*, 19 FCC Rcd at 4911-12, para. 73. We continue to consider whether interconnected VoIP services are telecommunications services or information services as those terms are defined in the Act, and we do not make that determination today. See 47 U.S.C. § 153(20), (46) (defining “information service” and “telecommunications service”).

⁵¹ See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1 (extending 911 obligations to interconnected VoIP providers); *CPNI Order*, 22 FCC Rcd at 6956, para. 56 (finding it is “reasonable for American consumers to expect that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider”). A service offering is an “interconnected VoIP service” if, among other things, it offers the *capability* for users to receive calls from and terminate calls to the PSTN, regardless of whether access to the PSTN is directly by the interconnected VoIP provider itself or through arrangements with a third party. See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7537, para. 36.

⁵² 47 U.S.C. § 251(b)(2).

⁵³ See *First Number Portability Order*, 11 FCC Rcd at 8431-32, para. 153 (extending LNP obligations to CMRS providers under sections 1, 2, 4(i), and 332 of the Act); *First Number Portability Order on Reconsideration*, 12 FCC Rcd at 7315-17, paras. 140-42 (affirming the Commission’s decision to impose number portability obligations on CMRS providers).

⁵⁴ *First Number Portability Order*, 11 FCC Rcd at 8431-32, para. 153.

⁵⁵ *Id.* at 8434, para. 157.

⁵⁶ *Id.*

⁵⁷ *Id.* at 8435, para. 158.

⁵⁸ *Id.* at 8431-32, para. 153.

20. To effectuate this policy, we must address both the obligations of interconnected VoIP providers as well as the obligations of telecommunications carriers that serve interconnected VoIP providers as their numbering partners. Thus, we take this opportunity to reaffirm that only carriers, absent a Commission waiver,⁵⁹ may access numbering resources directly from the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator (PA). Section 52.15(g)(2) of the Commission's rules limits access to the NANP numbering resources to those applicants that are (1) "authorized to provide service in the area for which the numbering resources are being requested"; and (2) "[are] or will be capable of providing service within sixty (60) days of the numbering resources activation date."⁶⁰ It is well established that our rules allow only carriers direct access to NANP numbering resources to ensure that the numbers are used efficiently and to avoid number exhaust.⁶¹ Thus, many interconnected VoIP providers may not obtain numbering resources directly from the NANPA because they will not have obtained a license or a certificate of public convenience and necessity from the relevant states.⁶² Interconnected VoIP providers that have not obtained a license or certificate of public convenience and necessity from the relevant states or otherwise are not eligible to receive numbers directly from the administrators may make numbers available to their customers through commercial arrangements with carriers (*i.e.*, numbering partners).⁶³ We emphasize that ensuring compliance with the Commission's numbering rules, including LNP requirements, in such cases remains the responsibility of

⁵⁹ See *Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, 20 FCC Rcd 2957, 2959, 2961-62, paras. 4, 9 (2005) (*SBCIS Waiver Order*). In this Order, we reiterate the Commission's existing rule of general applicability regarding eligibility for direct access to numbering resources. We note that petitions seeking waivers similar to the relief granted in the *SBCIS Waiver Order* are pending. See, e.g., *Wireline Competition Bureau Seeks Comment on Qwest Communications Corporation Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, Public Notice, 20 FCC Rcd 8765 (2005). This Order does not in any way prejudice the outcome of the Commission's consideration of those petitions.

⁶⁰ 47 C.F.R. § 52.15(g)(2).

⁶¹ See *NRO First Report and Order*, 15 FCC Rcd at 7615, para. 97 (stating that carriers must provide evidence demonstrating that they are licensed and/or certified to provide service prior to accessing numbering resources); see also, e.g., BellSouth Comments, WC Docket No. 04-36, at 53 (stating that an increase in the use of telephone numbers could accelerate number exhaust); Citizens Utility Board Comments, WC Docket No. 04-36, at 29-30 (arguing that IP-POTS service provider access to numbering resources will increase the demand on a strained numbering system); New Jersey Commission Comments, WC Docket No. 04-36, at 11-12 (arguing that the Commission should consider sufficient limits against self-selection of area codes, and should monitor efficient use of numbering resources); Ohio Commission Comments, WC Docket No. 04-36, at 41-42 (believing that if IP-enabled companies gained access to numbering resources it might frustrate the ability of the commission to enforce numbering conservation requirements); Letter from Carole J. Washburn, Secretary, Washington Utilities and Transportation Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 (filed Oct. 2, 2006) (raising concern about the conservation of numbering resources).

⁶² As noted *supra* note 50, we continue to consider the appropriate regulatory classification of interconnected VoIP services in the *IP-Enabled Services* proceeding. Pending a classification decision by the Commission, many interconnected VoIP providers maintain that they are information service providers and not telecommunications carriers under the Act. See, e.g., Vonage Reply Comments, WC Docket No. 04-36, at 19-20. To the extent that an interconnected VoIP provider is licensed or certificated as a carrier, that carrier is eligible to obtain numbering resources directly from NANPA, subject to all relevant rules and procedures applicable to carriers, including LNP requirements. Under these circumstances, the interconnected VoIP provider would not have a numbering partner, and would thus be solely responsible for compliance with the Commission's rules at issue here.

⁶³ See, e.g., AT&T Comments, WC Docket No. 04-36, at 25 (arguing that interconnected VoIP providers are not having any trouble obtaining numbers through partnerships with LECs). We note that these commercial arrangements may not include selling numbers. See, e.g., *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 22 FCC Rcd 651, 653, para. 7 (2007) ("Telephone numbers are a public resource and neither carriers nor subscribers 'own' their telephone numbers."); *StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004).

the carrier that obtains the numbering resource from the numbering administrator as well as the responsibility of the interconnected VoIP provider.⁶⁴

2. Authority

21. In this Order, we conclude that the Commission has ample authority to extend LNP obligations and numbering administration support obligations to interconnected VoIP providers. Specifically, we conclude that we have authority to extend LNP obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners under the Commission's plenary numbering authority pursuant to section 251(e) of the Act.⁶⁵ We further find Commission authority in section 251(b)(2) of the Act for the obligations we extend to numbering partners that serve interconnected VoIP providers. Separately, we analyze the extension of our rules to interconnected VoIP providers under our Title I ancillary jurisdiction.⁶⁶

22. *Plenary Numbering Authority.* Consistent with Commission precedent, we find that the plenary numbering authority that Congress granted this Commission under section 251(e)(1) provides ample authority to extend the LNP requirements set out in this Order to interconnected VoIP providers and their numbering partners.⁶⁷ Specifically, in section 251(e)(1) of the Act, Congress expressly assigned to the Commission exclusive jurisdiction over that portion of the NANP that pertains to the United States.⁶⁸ The Commission retained its "authority to set policy with respect to all facets of numbering administration in the United States."⁶⁹ To the extent that an interconnected VoIP provider provides services that offer its customers NANP telephone numbers, both the interconnected VoIP provider and the telecommunications carrier that secures the numbering resource from the numbering administrator subject themselves to the Commission's plenary authority under section 251(e)(1) with respect to those numbers.

23. *Section 251(b)(2) Authority over Telecommunications Carriers.* We find that section 251(b)(2) provides an additional source of authority to impose LNP obligations on the LEC numbering partners of interconnected VoIP providers.⁷⁰ Section 251(b)(2) states that all LECs have a "duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission."⁷¹ The Commission has long held that it has "authority to require that

⁶⁴ Additionally, with this Order, we clarify that LECs and CMRS providers have an obligation to port numbers to interconnected VoIP providers and their numbering partners subject to a valid port request.

⁶⁵ 47 U.S.C. § 251(e).

⁶⁶ See, e.g., *VoIP 911 Order*, 20 FCC Rcd at 10261-65, paras. 26-32.

⁶⁷ See *VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33 (relying on the Commission's plenary authority over U.S. NANP numbers, particularly Congress's direction to use that authority regarding 911, to impose 911 obligations on interconnected VoIP providers, given interconnected VoIP providers' use of NANP numbers to provide service).

⁶⁸ See 47 U.S.C. § 251(e)(1) (providing that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States").

⁶⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, CC Docket No. 96-98, CC Docket No. 95-185, NSD File No. 96-8, CC Docket No. 92-237, IAD File No. 94-102, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996) (explaining that by retaining exclusive jurisdiction over numbering policy the Commission preserves its ability to act flexibly and expeditiously).

⁷⁰ See 47 U.S.C. § 251(b)(2).

⁷¹ *Id.*

number portability be implemented ‘to the extent technically feasible’ and that our authority under section 251(b)(2) encompasses all forms of number portability.’⁷² Our application of this authority is informed by the Act’s focus on protecting consumers through number portability. Section 3 of the Act defines “number portability” as “the ability of *users* of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”⁷³ In this Order, we prescribe requirements that expand number portability to include ports to and from interconnected VoIP providers, and therefore find that section 251(b)(2) grants us authority to impose obligations on the interconnected VoIP providers’ LEC numbering partners to effectuate those requirements. By holding the LEC numbering partner responsible for ensuring a porting request is honored to the extent technically feasible, we thus abide by this statutory mandate. We interpret section 251(b)(2) to include a number porting obligation even when the switching of “carriers” occurs at the wholesale rather than retail level. Given Congress’s imposition of the number portability obligations on all such carriers and the broad terms of the obligation itself, we believe that ours is a reasonable interpretation of the statute. To find otherwise would permit carriers to avoid numbering obligations simply by creating an interconnected VoIP provider affiliate and assigning the number to such affiliate. Further, to ensure that consumers retain this benefit as technology evolves, we continue to believe that Congress’s intent is that number portability be a “dynamic concept” that accommodates such changes.⁷⁴ The Commission previously has found that it has the authority to alter the scope of porting obligations due to technological changes in how numbers are ported.⁷⁵ Similarly, the Act provides ample authority for the logical extension of porting obligations due to technological changes in how telephone service is provided to end-user customers. We exercise our authority under the Act to ensure that consumers’ interests in their existing telephone numbers are adequately protected whether the customer is using a telephone number obtained from a LEC directly or indirectly via an interconnected VoIP provider. In either case, the LEC or LEC numbering partner must comply with the Commission’s LNP rules.

24. *Ancillary Jurisdiction over Interconnected VoIP Services.* We further conclude that we have a separate additional source of authority under Title I of the Act to impose LNP obligations and numbering administration support obligations on interconnected VoIP providers. Ancillary jurisdiction may be employed, in the Commission’s discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated⁷⁶ and the assertion of jurisdiction is “reasonably

⁷² *Telephone Number Portability*, CC Docket No. 95-116, Fourth Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 16459, 16466-67, para. 12 (1999).

⁷³ 47 U.S.C. § 153(30) (emphasis added).

⁷⁴ See, e.g., *Intermodal Number Portability Order*, 18 FCC Rcd at 23708, para. 27 (discussing the reasonableness of differences in porting obligations due to differences in the technological feasibility of different types of porting).

⁷⁵ See *id.*

⁷⁶ See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*). *Southwestern Cable*, the lead case on the ancillary jurisdiction doctrine, upheld certain regulations applied to cable television systems at a time before the Commission had an express congressional grant of regulatory authority over that medium. See *id.* at 170-71. In *Midwest Video I*, the Supreme Court expanded upon its holding in *Southwestern Cable*. The plurality stated that “the critical question in this case is whether the Commission has reasonably determined that its origination rule will ‘further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public’s choice of programs and types of services.’” *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972) (*Midwest Video I*) (quoting *Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals*, Docket No. 18397, First Report and Order, 20 FCC 2d 201, 202 (1969) (*CATV First Report and Order*)). The Court later restricted the scope of *Midwest Video I* by finding that if the basis for jurisdiction over cable is that the authority is

(continued...)

ancillary to the effective performance of [its] various responsibilities.”⁷⁷ Both predicates for ancillary jurisdiction are satisfied here.

25. First, as we concluded in previous orders, interconnected VoIP services fall within the subject matter jurisdiction granted to us in the Act.⁷⁸ Section 1 of the Act, moreover, charges the Commission with responsibility for making available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.”⁷⁹ Thus, section 1, in conjunction with section 251, creates a significant federal interest in the efficient use of numbering resources.⁸⁰ Second, we find that requiring interconnected VoIP providers to comply with LNP rules and cost recovery mechanisms is reasonably ancillary to the effective performance of the Commission’s fundamental responsibilities. As noted above, section 251(b)(2) of the Act requires LECs to provide number portability in accordance with the requirements prescribed by the Commission to the extent technically feasible.⁸¹ Further, section 251(e)(2) requires all carriers to bear the costs of numbering administration and number portability on a competitively neutral basis as defined by the Commission, and thereby seeks to prevent those costs from undermining competition.⁸² The Commission has interpreted section 251(e)(2) broadly to extend to all carriers that utilize NANP telephone numbers and benefit from number portability.⁸³ In addition, as discussed above, section 1 of the Act charges the Commission with responsibility for making available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.”⁸⁴ Because interconnected VoIP service operates through the use of NANP telephone numbers and benefits from NANP administration and because this service is “increasingly used to replace analog voice service”⁸⁵ – a trend that we expect to continue – it is important that we take steps to ensure that interconnected VoIP service use of NANP numbers does not disrupt national policies adopted pursuant to section 251. As the Commission previously has stated, we “believe it is important that [the Commission] adopt uniform national rules regarding number portability implementation and deployment to ensure efficient and consistent use of number portability methods and numbering resources on a nationwide basis. Implementation of number portability, and its effect on numbering resources, will have an impact on

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ancillary to the regulation of broadcasting, the cable regulation cannot be antithetical to a basic regulatory parameter established for broadcast. See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979) (*Midwest Video II*).

⁷⁷ *Southwestern Cable*, 392 U.S. at 178.

⁷⁸ See, e.g., *CPNI Order*, 22 FCC Rcd at 6955-56, para. 55; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542, para. 47; *VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 (“[I]nterconnected VoIP services are covered by the statutory definitions of ‘wire communication’ and/or ‘radio communication’ because they involve ‘transmission of [voice] by aid of wire, cable, or other like connection . . .’ and/or ‘transmission by radio . . .’ of voice. Therefore, these services come within the scope of the Commission’s subject matter jurisdiction granted in section 2(a) of the Act.”).

⁷⁹ 47 U.S.C. § 151.

⁸⁰ See, e.g., *First Number Portability Order on Reconsideration*, 12 FCC Rcd at 7315-16, para. 141.

⁸¹ 47 U.S.C. § 251(b)(2).

⁸² See 47 U.S.C. § 251(e)(2); see also *Telephone Number Portability*, CC Docket No. 96-116, RM-8535, Third Report and Order, 13 FCC Rcd 11701, 11723, para. 35 (1998) (*Third Portability Order*).

⁸³ See *NANP Order*, 11 FCC Rcd at 2628, para. 95 (finding that the costs of NANP administration should be borne by those that benefit from number resources); *Cost Recovery Order*, 13 FCC Rcd at 11723-24, paras. 35-36 (concluding that the costs of establishing number portability include the LECs’ costs, as well as the costs of other telecommunications carriers, such as interexchange carriers and CMRS providers).

⁸⁴ 47 U.S.C. § 151.

⁸⁵ See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7542-43, para. 48 (citing *CALEA First Report and Order*, 20 FCC Rcd at 15009-10, para. 42).

interstate, as well as local, telecommunications services.”⁸⁶ Additionally, the Commission has found that those providers that benefit from number resources should also bear the costs.⁸⁷

26. Extending LNP obligations to interconnected VoIP providers is “reasonably ancillary” to the performance of the Commission’s obligations under section 251 and section 1 of the Act. If we failed to do so, American consumers might not benefit from new technologies because they would be unable to transfer their NANP telephone numbers between service providers and thus would be less likely to want to use a new provider.⁸⁸ As a result, the purposes and effectiveness of section 251, as well as section 1, would be greatly undermined. The ability of end users to retain their NANP telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of services they can choose to purchase.⁸⁹ Allowing customers to respond to price and service changes without changing their telephone numbers will enhance competition, a fundamental goal of section 251 of the Act, while helping to fulfill the Act’s goal of facilitating “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.”⁹⁰

27. Further, if we failed to exercise our ancillary jurisdiction, interconnected VoIP providers would sustain a competitive advantage against telecommunications carriers through the use and porting of NANP telephone numbers without bearing their share of the costs of LNP and NANP administration, thus defeating the critical requirement under section 251(e) that carriers bear such costs on a competitively neutral basis. Additionally, we extend the LNP obligations to interconnected VoIP providers because doing so will have a positive impact on the efficient use of our limited numbering resources.⁹¹ The Commission avoids number waste by preventing an interconnected VoIP provider from porting-in a number from a carrier (often through its numbering partner) and then later refusing to port-out at the customer’s request by arguing that no such porting obligation exists.⁹² Failure to extend LNP obligations

⁸⁶ *First Number Portability Order*, 11 FCC Rcd at 8371, para. 37.

⁸⁷ *See NANP Order*, 11 FCC Rcd at 2628, para. 95.

⁸⁸ *See, e.g.*, AARP Comments, WC Docket No. 04-36, at 2 (stating that consumers have come to expect LNP and that LNP promotes local competition); NASUCA Comments, WC Docket No. 04-36, at 33-34 (arguing that if consumers are unable to port their telephone numbers between providers then consumers are much less likely to change providers); SBC Comments, WC Docket No. 04-36, at 83 (asserting that it can warp competition if interconnected VoIP providers are not subject to LNP obligations); Letter from William B. Wilhelm, Jr. and Ronald W. Del Sesto, Jr., Counsel for Vonage Holdings Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 99-200, WC Docket Nos. 04-36, 03-251 (filed Mar. 28, 2005) (stating that porting benefits consumers); Comment from Gerrit Weining, WC Docket No. 04-36 (filed Apr. 3, 2006) (arguing that competition is restricted without porting); Letter from Adam Kupetsky, Regulatory Counsel, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 96-98, WC Docket No. 04-36 (filed May 1, 2006) (stating that LNP is a fundamental tenet of the Act’s goal of promoting competition); Letter from Amy Wolverton, Senior Corporate Counsel, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 95-116, 96-45, WC Docket No. 04-36, at 1 (filed Oct. 5, 2006) (discussing how porting fosters industry competition).

⁸⁹ *First Number Portability Order*, 11 FCC Rcd at 8368, para. 30. We note that some interconnected VoIP providers currently offer number porting but we find it appropriate to ensure this capability for all customers using NANP-based telephone numbers by explicitly extending our LNP obligations to interconnected VoIP providers. *See, e.g.*, Vonage Reply, WC Docket No. 04-36, at 24.

⁹⁰ 47 U.S.C. § 151.

⁹¹ *See, e.g.*, Level 3 Feb. 23, 2007 *Ex Parte* Letter at 1 (arguing that porting fosters a competitive marketplace while encouraging conservation of a scarce resource).

⁹² *See Time Warner Cable Order*, 22 FCC Rcd at 3521-22, para. 16 (finding that it is consistent with Commission policy that when a LEC wins back a customer from a VoIP provider that the number should be ported to the LEC that wins the customer, and thus such a requirement is an explicit condition to the section 251 rights provided for in that order).

to interconnected VoIP providers and their numbering partners would thwart the effective and efficient administration of our numbering administration responsibilities under section 251 of the Act. Therefore, extending the LNP and numbering administration support obligations to interconnected VoIP providers is “reasonably ancillary to the effective performance of [our] responsibilities”⁹³ under sections 251 and 1 of the Act and “will ‘further the achievement of long-established regulatory goals’”⁹⁴ to make available an efficient and competitive communication service.⁹⁵

28. We believe that the language in section 251(e)(2), which phrases the obligation to contribute to the costs of numbering administration as applicable to “all telecommunications carriers,” reflects Congress’s intent to ensure that no telecommunications carriers were omitted from the contribution obligation, and does not preclude the Commission from exercising its ancillary authority to require other providers of comparable services to make such contributions. Thus, the language does not circumscribe the class of carriers that may be required to support numbering administration. The legislative history of the Telecommunications Act of 1996 (1996 Act) supports this view and indicates that Congress desired that such costs be borne by “all providers.”⁹⁶ Because interconnected VoIP services are increasingly being used as a substitute for traditional telephone service, we find that our exercise of ancillary authority to require contributions from interconnected VoIP providers is consistent with this statutory language and Congressional intent. The statutory construction maxim of *expressio unius est exclusio alterius* – the mention of one thing implies the exclusion of another – does not require a different result. This maxim is non-binding and “is often misused.”⁹⁷ “The maxim’s force in particular situations depends entirely on context, whether or not the draftsmen’s mention of one thing, like a grant of authority, does really necessarily, or at least reasonably, imply the preclusion of alternatives.”⁹⁸ Here, we believe that the relevant language in section 251(e)(2) was designed to ensure that no telecommunications carriers were omitted from the contribution obligation, and not to preclude the Commission from exercising its ancillary authority to require others to make such contributions.⁹⁹ Absent any affirmative evidence that Congress intended to limit the Commission’s judicially recognized ancillary jurisdiction in this area, we find that the *expressio unius* maxim “is simply too thin a reed to support the conclusion that Congress has clearly resolved [the] issue.”¹⁰⁰

29. We also note that our actions here are consistent with other provisions of the Act. For example, we are guided by section 706 of the 1996 Act, which, among other things, directs the

⁹³ *Southwestern Cable*, 392 U.S. at 178.

⁹⁴ *Midwest Video I*, 406 U.S. at 667-68 (quoting *CATV First Report and Order*, 20 FCC 2d at 202).

⁹⁵ 47 U.S.C. § 151; *see also, e.g.*, Ohio Commission Comments, WC Docket No. 04-36, at 39 (stating that LNP is important for customer choice in a competitive market). Further, the Commission relied on its ancillary jurisdiction when it first sought comment on LNP prior to the enactment of section 251. *See Telephone Number Portability*, CC Docket No. 95-116, RM-8535, Notice of Proposed Rulemaking, 10 FCC Rcd 12350, 12361, para. 29 (1995).

⁹⁶ S. Conf. Rep. No. 104-230 at 122 (1996) (“The costs for numbering administration and number portability shall be borne by all providers on a competitively neutral basis.”).

⁹⁷ *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 782 (D.C. Cir. 1998) (*Shook*).

⁹⁸ *Id.*

⁹⁹ *See, e.g., Shook*, 132 F.3d at 782 (noting that Congress sometimes “drafts statutory provisions that appear preclusive of other unmentioned possibilities—just as it sometimes drafts provisions that appear duplicative of others—simply, in Macbeth’s words, ‘to make assurance double sure’”).

¹⁰⁰ *Mobile Communications Corp. v. FCC*, 77 F.3d 1399, 1405 (D.C. Cir. 1996); *see also Martini v. Federal Nat’l Mortgage Ass’n*, 178 F.3d 1336, 1342-43 (D.C. Cir. 1999) (noting that the *expressio unius* principle is particularly unhelpful in addressing issues of administrative law).

Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that “promote competition in the local telecommunications market.”¹⁰¹ The extension of the LNP obligations to interconnected VoIP providers may spur consumer demand for their service, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.¹⁰²

3. Local Number Portability Obligations

30. As we discuss in detail above, imposing LNP and numbering administration support requirements on interconnected VoIP providers and their numbering partners is consistent with both the language of the Act and the Commission’s policies implementing the LNP obligations. To ensure that consumers enjoy the full benefits of LNP and to maintain competitively neutral funding of numbering administration, we impose specific requirements to effectuate this policy.

31. *Porting Obligations of an Interconnected VoIP Provider and its Numbering Partner.* As discussed above, section 3 of the Act defines local “number portability” as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁰³ We find that the “user” in this context is the end-user customer that subscribes to the interconnected VoIP service and not the interconnected VoIP provider.¹⁰⁴ To find otherwise would contravene the LNP goals of “allowing customers to respond to price and service changes without changing their telephone numbers.”¹⁰⁵ Thus, it is the end-user customer that retains the right to port-in the number to an interconnected VoIP service or to port-out the number from an interconnected VoIP service.¹⁰⁶

32. As discussed above, both an interconnected VoIP provider and its numbering partner must facilitate a customer’s porting request to or from an interconnected VoIP provider. By “facilitate,” we mean that the interconnected VoIP provider has an affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the

¹⁰¹ 47 U.S.C. § 157 nt. The Act necessarily has many goals. One is the development of the Internet, set forth in section 230 of the Act, which provides that “[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2). But the Act specifies other important goals, discussed *supra*, including the preservation of an efficient numbering administration system that fosters competition among all communications services in a competitively neutral and fair manner. Especially here, where extending LNP obligations is likely to encourage consumers to use interconnected VoIP services as a result of our facilitation of porting, we find no conflict between our actions and the underlying goals expressed in the Act.

¹⁰² See *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, GN Docket No. 04-54, 19 FCC Rcd 20540, 20578 (2004) (“[S]ubscribership to broadband services will increase in the future as new applications that require broadband access, *such as VoIP*, are introduced into the marketplace, and consumers become more aware of such applications.”) (emphasis added).

¹⁰³ 47 U.S.C. § 153(30) (emphasis added).

¹⁰⁴ See, e.g., ALTS Reply, WC Docket No. 04-36, at 10 (claiming that an interconnected VoIP provider may attempt to prevent porting by claiming that it is the end user associated with the number); see also *Time Warner Cable Order*, 22 FCC Rcd at 3517-20, paras. 9-14 (affirming that wholesale providers of telecommunications services are telecommunications carriers for purposes of sections 251(a) and (b) of the Act); *id.* at para. 16 (agreeing that a number should be ported to the LEC that wins the customer at the customer’s request).

¹⁰⁵ *First Number Portability Order*, 11 FCC Rcd at 8368, para. 30.

¹⁰⁶ See, e.g., *NANP Order*, 11 FCC Rcd at 2591, para. 4 (finding that numbers are a public resource and not the property of carriers).

interconnected VoIP customer (*i.e.*, the “user”), subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number. We recognize that when an interconnected VoIP provider obtains NANP telephone numbers and LNP capability through a numbering partner, the interconnected VoIP provider does not itself execute the port of the number from a technical perspective. In such situations, the interconnected VoIP provider must take any steps necessary to facilitate its numbering partner’s technical execution of the port.¹⁰⁷

33. We also find that interconnected VoIP providers and their numbering partners may not enter into agreements that would prohibit or unreasonably delay an interconnected VoIP service end user from porting between interconnected VoIP providers, or to or from a wireline carrier or a covered CMRS provider.¹⁰⁸ Because LNP promotes competition and consumer choice, we find that any agreement by interconnected VoIP providers or their numbering partners that prohibits or unreasonably delays porting could undermine the benefits of LNP to consumers. Additionally, because we determine that the carrier that obtains the number from the NANPA is also responsible for ensuring compliance with these obligations, such porting-related restrictions would contravene that carrier’s section 251(b)(2) obligation.¹⁰⁹ If an interconnected VoIP provider or its numbering partner attempts to thwart an end user’s valid porting request, that provider or carrier will be subject to Commission enforcement action for a violation of the Act and the Commission’s LNP rules.¹¹⁰ Further, no interconnected VoIP provider may contract with its customer to prevent or hinder the rights of that customer to port its number because doing so would violate the LNP obligations placed on interconnected VoIP providers in this Order.¹¹¹ To the extent that interconnected VoIP providers have existing contractual provisions that have the effect of unreasonably delaying or denying porting, such provisions do not supersede or otherwise affect the porting obligations established in this Order.¹¹²

34. *Scope of Porting Obligations.* The Commission’s porting obligations vary depending on whether a service is provided by a wireline carrier or a covered CMRS provider.¹¹³ As described above, interconnected VoIP providers generally obtain NANP telephone numbers through commercial arrangements with one or more traditional telecommunications carriers. As a result, the porting

¹⁰⁷ See, e.g., Letter from Ann D. Berkowitz, Associate Director – Federal Regulatory Advocacy, Verizon, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 04-36, at 2 (filed Oct. 23, 2007) (Verizon Oct. 23, 2007 *Ex Parte* Letter) (stating that a VoIP provider’s refusal to unlock a ported number from the 911 database until 90 days after the customer cancelled the VoIP service effectively obstructed the number port because the winning carrier could not provide service to its customer using the former VoIP provider’s number unless the 911 database was updated to reflect the service provider change).

¹⁰⁸ Cf. *Intermodal Number Portability Order*, 18 FCC Rcd at 23711-12, para. 36 (finding that requiring interconnection agreements between wireless and wireline carriers solely for the purposes of porting numbers could undermine the benefits of LNP).

¹⁰⁹ To the extent that carriers with direct access to numbers do not have an LNP obligation, that exemption from LNP only extends to the exempt service and not to that carrier’s activities as a numbering partner for an interconnected VoIP provider.

¹¹⁰ See, e.g., *Wireless Number Portability Order*, 18 FCC Rcd at 20975, para. 11 (interpreting the Act’s number portability definition to mean that “customers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them”).

¹¹¹ See, e.g., *id.* at 20975-76, paras. 13-17 (finding that any contract provisions that consumers may not port their numbers are to be without effect on the carrier’s porting obligation).

¹¹² See, e.g., *id.*; see also Letter from Lawrence E. Strickling, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, at 2 (filed Mar. 13, 2006) (observing that the Commission has expressly stated that contract disputes are not a basis for refusing to port a number).

¹¹³ See *supra* Part II.A (discussing the LNP obligations for wireline carriers and covered CMRS providers).

obligations to or from an interconnected VoIP service stem from the status of the interconnected VoIP provider's numbering partner and the status of the provider to or from which the NANP telephone number is ported.¹¹⁴ For example, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a wireline carrier for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) a wireless carrier whose coverage area overlaps with the geographic location of the porting-out numbering partner's rate center; (2) a wireline carrier with facilities or numbering resources in the same rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).¹¹⁵ Similarly, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a covered CMRS provider for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) another wireless carrier; (2) a wireline carrier within the telephone number's originating rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).¹¹⁶

35. We also clarify that carriers have an obligation under our rules to port-out NANP telephone numbers, upon valid request, for a user that is porting that number for use with an interconnected VoIP service.¹¹⁷ For example, subject to a valid port request on behalf of the user, a wireline carrier must port-out a NANP telephone number to: (1) an interconnected VoIP provider that partners with a wireless carrier for numbering resources, where the partnering wireless carrier's coverage area overlaps with the geographic location of the porting-out wireline carrier's rate center; or (2) an interconnected VoIP provider that partners with a wireline carrier for numbering resources, where the partnering wireline carrier has facilities or numbering resources in the same rate center as the porting-out wireline carrier.¹¹⁸ Similarly, subject to a valid port request on behalf of the user, a wireless carrier must port-out a NANP telephone number to: (1) an interconnected VoIP provider that partners with a wireless carrier; or (2) an interconnected VoIP provider that partners with a wireline carrier for numbering resources, where the partnering wireline carrier is within the number's originating rate center.¹¹⁹

36. We decline to adopt new porting intervals that apply specifically to ports between interconnected VoIP providers and other providers through a numbering partner.¹²⁰ The intervals that

¹¹⁴ We note that because interconnected VoIP providers offer telephone numbers not necessarily based on the geographic location of their customers – many times at their customers' requests – there may be limits to number porting between providers. The Act only provides for service provider portability and does not address service or location portability. *See First Number Portability Order*, 11 FCC Rcd at 8447, para. 181. Thus, for example, if an interconnected VoIP service customer selects a number outside his current rate center, or if the interconnected VoIP service customer selects a number within his geographic rate center and moves out of that rate center, and then requests porting to a wireline carrier in his new rate center, the customer would not be able to port the number. *See* 47 C.F.R. § 52.26(a). We expect interconnected VoIP providers to fully inform their customers about these limitations, particularly limitations that result from the portable nature of, and use of non-geographic numbers by, certain interconnected VoIP services.

¹¹⁵ *See supra* Part II.A (providing a summary of the various porting obligations).

¹¹⁶ *See id.*

¹¹⁷ To the extent that an interconnected VoIP provider is certificated or licensed as a carrier, then the Title II LNP obligations to port-in or port-out to the carrier are already determined by existing law. *See, e.g.*, 47 C.F.R. § 52.26(a).

¹¹⁸ *See id.*

¹¹⁹ *See id.* We clarify that carriers must port-out NANP telephone numbers upon valid requests from an interconnected VoIP provider (or from its associated numbering partner).

¹²⁰ We seek comment, however, on whether the Commission should adopt rules regarding porting intervals in the Notice adopted with this Order. *See infra* para. 59.

would be applicable to ports between the numbering partner and the other provider, if the port were not related to an interconnected VoIP service, will apply to the port of the NANP telephone number between the numbering partner and the other provider (or the other provider's numbering partner) when the end user with porting rights is a customer of the interconnected VoIP provider.¹²¹

37. We take seriously our responsibilities to safeguard our scarce numbering resources and to implement LNP obligations for the benefit of consumers. Consumers, carriers, or interconnected VoIP providers may file complaints with the Commission if they experience unreasonable delay or denial of number porting to or from an interconnected VoIP provider in violation of our LNP rules.¹²² We will not hesitate to enforce our LNP rules to ensure that consumers are free to choose among service providers, subject to our LNP rules, without fear of losing their telephone numbers.

38. *Allocation of LNP Costs.* Section 251(e)(2) provides that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”¹²³ Because interconnected VoIP providers benefit from LNP, we find that they should contribute to meet the shared LNP costs.¹²⁴ Further, similar to the Commission’s finding in its *Cost Recovery Reconsideration Order*, we also believe that interconnected VoIP providers may find it costly and administratively burdensome to develop region-specific attribution systems for all of their end-user services, and thus we allow these providers to use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA.¹²⁵

4. Numbering Administration Cost Requirements

39. Although interconnected VoIP providers do not have any specific numbering administration requirements (e.g., pooling requirements),¹²⁶ they do require the use of NANP numbering resources to provide an interconnected VoIP service, and thereby benefit from and impose costs related to

¹²¹ For example, if the interconnected VoIP provider’s numbering partner is a wireline carrier and the porting-in provider is a wireline carrier, the wireline-to-wireline porting interval would apply to the port between the two carriers.

¹²² See 47 U.S.C. § 208; see also 47 U.S.C. § 503(b)(5) (granting the Commission authority to assess a forfeiture penalty against any person who is not a common carrier).

¹²³ 47 U.S.C. § 251(e)(2).

¹²⁴ In the Commission’s *Cost Recovery Order*, the Commission determined that carriers not subject to rate regulation (e.g., competitive LECs and CMRS providers) may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with obligations under the Act. See *Cost Recovery Order*, 13 FCC Rcd at 11774, para. 36; *Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2609-10, para. 64. We find that this same recovery method is appropriate for interconnected VoIP providers. Further, the numbering partner may exclude revenues derived from providing numbering resources to interconnected VoIP providers (regardless of whether they hold themselves out as telecommunications carriers) in the numbering partner’s revenue calculation on FCC Form 499-A pursuant to the carrier’s carrier rule. Cf. *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7547-48, paras. 58-59. In any case, we do not expect both the interconnected VoIP provider and its numbering partner to contribute on the same revenues.

¹²⁵ See *Cost Recovery Reconsideration Order*, 17 FCC Rcd at 2598, para. 37. Providers that submit an attestation certifying that they are unable to divide their traffic and resulting end-user revenue among the seven LNPA regions precisely will be allowed to divide their end-user revenue among these regions based on the percentage of subscribers served in each region. Providers may use their billing databases to identify subscriber location.

¹²⁶ See *supra* Part II.A.

numbering administration. Thus, we require interconnected VoIP providers to contribute to meet the shared numbering administration costs on a competitively neutral basis.¹²⁷

5. Implementation

40. The LNP obligations adopted in this Order for interconnected VoIP providers and their numbering partners become effective 30 days after Federal Register publication. The reporting requirements for determining interconnected VoIP providers' contribution to the shared costs of numbering administration and LNP require interconnected VoIP providers to file an annual FCC Form 499-A.¹²⁸ To ensure that interconnected VoIP providers' contributions for numbering administration and LNP are allocated properly, interconnected VoIP providers should include in their annual FCC Form 499-A filing historical revenue information for the relevant year, including all information necessary to allocate revenues across the seven LNPA regions (e.g., January 2007 through December 2007 revenue information for the April 2008 filing). The Commission will revise FCC Form 499-A at a later date, consistent with the rules and policies outlined in this Order.¹²⁹ Interconnected VoIP providers, however, should familiarize themselves with the FCC Form 499-A and the accompanying instructions in preparation for this filing.¹³⁰ Based on these filings, the appropriate administrators will calculate the funding base and individual contributions for each support mechanism, and provide an invoice to each interconnected VoIP provider for its contribution to the shared costs of the respective support mechanism. We find that USAC should be prepared to collect this information with the next annual filing, and that the LNPA and the NANP billing and collection agent should be prepared to include interconnected VoIP provider revenues in their calculations for the 2008 funding year based on the next annual FCC Form 499-A filings.

¹²⁷ Further, as the Commission determined for carrier-specific costs directly related to thousands block number pooling of carriers not subject to rate regulation, interconnected VoIP providers may, to the extent that any costs exist, recover them in any lawful manner. See *Third Numbering Order*, 17 FCC Rcd at 264, para. 25. Additionally, as explained above in note 124, numbering partners may exclude revenues derived from providing wholesale inputs to interconnected VoIP providers that do not hold themselves out as telecommunications carriers on FCC Form 499-A pursuant to the carrier's carrier rule. Cf. *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7547-48, paras. 58-59.

¹²⁸ Interconnected VoIP providers not meeting the *de minimis* standard for contributing to the federal Universal Service Fund (USF) already are required to file FCC Form 499-A on an annual basis. See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7548, para. 60.

¹²⁹ See *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telephone Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24972 n.103 (2002).

¹³⁰ Form 499-A and its instructions are located on the Commission's form page at <http://www.fcc.gov/formpage.html> and on the Universal Service Administrative Company's (USAC) form page at <http://www.usac.org/fund-administration/forms/default.aspx>.

B. Intermodal Local Number Portability

41. We next adopt measures to facilitate intermodal number portability.¹³¹ As discussed above, the Commission adopted requirements for porting numbers from wireline carriers to wireless carriers and *vice versa*. However, we find that additional steps are appropriate to ensure that consumers more fully benefit from these requirements as intended by the Commission. First, we seek to clarify existing intermodal LNP requirements in response to concerns that certain carriers are unduly hindering the number porting validation process. Second, we respond to the D.C. Circuit's stay of the Commission's *Intermodal Number Portability Order* to ensure that customers of carriers qualifying as small entities under the RFA likewise receive the benefits of LNP.

1. Validating Local Number Portability Requests

42. We grant the request of T-Mobile and Sprint Nextel (Petitioners) to clarify that the porting-out provider may not require more information than is a minimal but reasonable amount from the porting-in provider to validate the port request and accomplish the port. As noted above,¹³² the Petitioners filed a petition for declaratory ruling requesting that the Commission make clear that carriers obligated to provide LNP may not obstruct or delay the porting process by demanding information from requesting carriers beyond that required to validate the customer request.¹³³ Generally speaking, the porting interval comprises two elements: the Confirmation Interval and the Activation Interval.¹³⁴ In order to begin the porting interval and trigger the Confirmation Interval during which a port request is validated, a new service provider first must provide certain information to the old service provider.¹³⁵ The record in this proceeding indicates that many requesting porting-in providers experience difficulties with this process, which in turn ultimately delays the port itself.¹³⁶ While the record reveals a variety of potential

¹³¹ In addition, as discussed below, we find it more appropriate to seek comment on other issues in the accompanying Notice.

¹³² See *supra* para. 15.

¹³³ See T-Mobile/Sprint Nextel Petition at 1.

¹³⁴ See *Telephone Number Portability*, CC Docket No. 95-116, Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 18515, 18516-17, para. 4 (2004) (*Intermodal Number Porting Interval Second Further Notice*).

¹³⁵ See *id.* This Order does not address the intermodal porting intervals themselves, but rather clarifies the information necessary for the validation process as a prelude to the Confirmation Interval. See, e.g., T-Mobile/Sprint Nextel Reply, CC Docket No. 95-116, at 8 (filed Feb. 23, 2007) (stating that their petition is not about the porting intervals). In the accompanying Notice, we seek comment on the porting intervals. See *infra* paras. 59-65 (seeking comment on the porting intervals themselves).

¹³⁶ See, e.g., Charter Comments, CC Docket No. 95-116, at 5, 9 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 4, 7 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Leap Wireless Comments, CC Docket No. 95-116, at 6-7 (filed Feb. 8, 2007); Integra Reply, CC Docket No. 95-116, at 2-5 (filed Feb. 23, 2007). In particular, the Petitioners and other commenters point out that in many instances there is a much higher cancellation rate for customers undergoing intermodal ports than for wireless-to-wireless ports. See, e.g., T-Mobile/Sprint Nextel Petition at 5; CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007). But see Embarq Comments, CC Docket No. 95-116, at 5 (filed Feb. 8, 2007) (stating that the cancellation rate for wireless carrier porting requests in 2006 was only 5.5%); Qwest Comments, CC Docket No. 95-116, at 4 n.12 (filed Feb. 8, 2007) (stating that porting cancellations might be influenced by such factors as a realization by a customer that some incidental service associated with the wireline loop might be "lost" if the number is ported, or a customer intent on porting might change position after reviewing the contractual restrictions of the wireless carrier); Verizon Comments, CC Docket No. 95-116, at 5-6 (filed Feb. 8, 2007) (arguing that the fact that Petitioners are experiencing higher cancellation rates than other carriers indicates that Petitioners are responsible for their higher cancellation rates).

contributing causes,¹³⁷ we are persuaded by the record that burdensome porting-related procedures play a role in the difficulties providers experience when seeking to fulfill customers' desire to port their numbers, particularly given the incentives that providers have to obstruct the porting process.¹³⁸ Moreover, as discussed below, onerous port validation procedures are inconsistent with the Act and Commission precedent. To address these concerns regarding obstruction and delay in the porting process, we clarify that entities subject to our LNP obligations may not demand information beyond what is required to validate the port request and accomplish the port.¹³⁹

43. We disagree with commenters who suggest, based on the Petitioners' reliance on the *Wireless Local Number Portability Order*, that boundaries on the range of acceptable port validation processes are limited to the context of wireless-to-wireless ports.¹⁴⁰ For one, we observe that the relevant analysis in the *Wireless Local Number Portability Order* does not depend on any unique factual or legal factors arising in the wireless context. For example, in holding in that order that carriers may not impose non-porting related restrictions on the porting-out process, the Commission based its decision on the definition of number portability under the Act and Commission rules "to mean that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their number with them."¹⁴¹ Indeed, both the Act and Commission rules define number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."¹⁴² We find that limiting carriers to requiring a minimum but reasonable amount of information to validate a customer request and perform a port will ensure that customers can port their numbers without impairment of the convenience of switching providers due to delays in the process that can result when additional information is required. We also find support for our clarification in other Commission precedent. For example, in the *Intermodal Local Number Portability Order*, the Commission held that "carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established."¹⁴³ Thus,

¹³⁷ See, e.g., AT&T Comments, CC Docket No. 95-116, at 4 (filed Feb. 8, 2007) (stating that AT&T wireline requires 27 or fewer data fields); Embarq Comments, CC Docket No. 95-116, at 3-4 (filed Feb. 8, 2007) (stating that Embarq requires 20 fields); Verizon Comments, CC Docket No. 95-115, at 7 (stating that 26 fields on the LSR need to be completed for an intermodal number portability request under the industry guidelines for number portability).

¹³⁸ See, e.g., Charter Comments, CC Docket No. 95-116, at 2, 7, 9-10 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 5-6 (filed Feb. 8, 2007).

¹³⁹ See, e.g., Charter Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007); Iowa Utilities Board Comments, CC Docket No. 95-116, at 2 (filed Feb. 7, 2007). We disagree with commenters that suggest that the Commission may not act on this petition because no controversy or uncertainty exists. See, e.g., AT&T Comments, CC Docket No. 95-116, at 1 (filed Feb. 8, 2007); Qwest Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); TWTC *et al.* Comments, CC Docket No. 95-116, at 1-2 (filed Feb. 8, 2007). Section 1.2 of the Commission's rules states that "[t]he Commission may . . . on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty." 47 C.F.R. § 1.2; see also 5 U.S.C. § 554(e) (stating that an agency, "in its sound discretion, may issue a declaratory order to . . . remove uncertainty"); USCC Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (stating that a controversy exists as to whether the wireline practices are consistent with the FCC's number portability mandate). We find that there is uncertainty regarding the validation process under an entity's LNP obligations, and thus we adopt this Order to clarify those obligations.

¹⁴⁰ See, e.g., TWTC *et al.* Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007).

¹⁴¹ *Wireless Local Number Portability Order*, 18 FCC Rcd at 20975, para. 11.

¹⁴² 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l).

¹⁴³ *Intermodal Local Number Portability Order*, 18 FCC Rcd at 23711, para. 34.

we clarify that for all ports – whether intermodal, wireline-to-wireline, or wireless-to-wireless ports – the porting-out provider may not require more information from the porting-in provider than is actually reasonable to validate the port request and accomplish the port. However, we note that when we clarify that carriers may require information necessary to accomplish a port, that does not encompass information necessary to settle the customer’s account or otherwise enforce any other provisions of the customer’s contract.¹⁴⁴ Of course, as in the wireless-to-wireless LNP context, carriers are free to notify customers of the consequences of terminating service, but may not hold a customer’s number while attempting to do so.¹⁴⁵

44. We find that the Commission should adopt rules governing the LNP validation process. As stated above, to begin a port, a porting-in provider must first provide certain requested information to the porting-out provider as part of the port validation process.¹⁴⁶ Thus, even where the Commission has adopted specific porting intervals for ports, problems associated with LNP validation have the potential to lengthen significantly the overall porting process beyond the time period specified in those intervals. Commenters contend that this is responsible for the high cancellation rate for intermodal ports, at least in part.¹⁴⁷

45. The record reveals that some difficulties in the validation process can arise due to the volume of information requested by providers. For example, incumbent LECs typically require port requests to be submitted using Local Service Request (LSR) forms.¹⁴⁸ However, the number of fields and specific information required can vary greatly from carrier to carrier.¹⁴⁹ In particular, commenters contend that delays are caused by the efforts they must undertake to complete the numerous fields in the

¹⁴⁴ While the Commission’s determination to “prevent carriers from imposing restrictions on porting beyond necessary customer validation procedures” was based in part on the analysis of specific language from the Commission rule mandating LNP for CMRS providers, we observe that substantially the same language appears in the Commission’s rules regarding wireline LNP. *Compare Wireless Local Number Portability Order*, 18 FCC Rcd at 20975-76, paras. 14-15 (quoting section 52.31 of the Commission’s rules that “CMRS providers must provide a long term database method for number portability, including the ability to support roaming . . . in switches for which another carrier has made a specific request for the provision of number portability . . .”), *with* 47 C.F.R. § 52.23(b)(1) (“LECs must provide a long-term database method for number portability . . . in switches for which another carrier has made a specific request for the provision of number portability . . .”).

¹⁴⁵ *Wireless Local Number Portability Order*, 18 FCC Rcd at 20975-76, paras. 14-16.

¹⁴⁶ *See, e.g.*, T-Mobile/Sprint Reply at 8-9 (“The clock does not even start ticking on the porting interval until the porting-in carrier submits an error-free port request.”); CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (stating that carriers often prevent the clock from even starting on the intercarrier porting process by requiring unnecessary information such as “account category” and “line activity,” and by rejecting Local Service Requests with incorrect or incomplete information).

¹⁴⁷ *See, e.g.*, T-Mobile/Sprint Nextel Petition at 5; Charter Comments, CC Docket No. 95-116, at 5, 9 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 4, 7 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Leap Wireless Comments, CC Docket No. 95-116, at 6-7 (filed Feb. 8, 2007); Integra Reply, CC Docket No. 95-116, at 2-5 (filed Feb. 23, 2007).

¹⁴⁸ *See, e.g.*, Verizon Comments, CC Docket No. 95-116, at 6-7 (filed Feb. 8, 2007); Leap Wireless Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007).

¹⁴⁹ *See, e.g.*, AT&T Comments, CC Docket No. 95-116, at 4 (filed Feb. 8, 2007) (stating that AT&T wireline requires 27 or fewer data fields); Embarq Comments, CC Docket No. 95-116, at 3-4 (filed Feb. 8, 2007) (stating that Embarq requires 20 fields); Verizon Comments, CC Docket No. 95-115, at 7 (stating that only 26 fields on the LSR need to be completed for an intermodal number portability request under the industry guidelines for number portability).

LSRs, and that errors are more likely the greater the number of fields that are required.¹⁵⁰ While some of these variations may arise due to differences in the legacy systems of different incumbent LECs,¹⁵¹ commenters also indicate that some of the information requested appears designed to address issues unrelated to validation and completion of the port, such as information designed to facilitate the porting-out carrier's own process of disconnecting the customer's service.¹⁵²

46. In response to these concerns, we find that it is appropriate for the Commission to adopt specific criteria governing the information required for port validation for simple ports.¹⁵³ As stated above, we clarify that, carriers may not require the submission of information for purposes of the LNP process other than a reasonable amount to validate and complete the port.¹⁵⁴ Nonetheless, we believe that the adoption of specific requirements will facilitate the enforcement of that general obligation and minimize disputes among carriers. Furthermore, while certain carriers' legacy systems might be designed to validate port requests on a range of different information, we agree with commenters who suggest that customers' porting experience would be improved with the standardization of the LNP validation criteria for simple ports.¹⁵⁵ Commenters point out that it is not uncommon today for incumbent LECs to make ongoing changes to their port validation process,¹⁵⁶ and that wireless carriers were able to readily implement a reduction in the number of data fields required to validate wireless-to-wireless port requests.¹⁵⁷ Moreover, many competitors point out that they have invested money to implement their own systems and processes in an effort to reduce the difficulties customers experience with intermodal porting.¹⁵⁸

47. Based on the record before us, we conclude that the Commission should require LNP validation based on no more than four fields for simple ports, and should specify by rule those specific fields. The wireless industry has reached an agreement to require only three fields of information to

¹⁵⁰ See, e.g., Charter Comments, CC Docket No. 95-116, at 5-6 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007); USCC Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007).

¹⁵¹ See, e.g., Level 3 Reply, CC Docket No. 95-116, at 3-4 (filed Feb. 23, 2007); TWTC *et al.* Comments, CC Docket No. 95-116, at 2, 5 (filed Feb. 8, 2007).

¹⁵² See, e.g., Integra Reply, CC Docket No. 95-116, at 3-4 (filed Feb. 23, 2007); Embarq Comments, CC Docket No. 95-116, at 3 n.6 (filed Feb. 8, 2007).

¹⁵³ As the Commission previously has explained, simple ports are those ports that: (1) do not involve unbundled network elements; (2) involve an account only for a single line; (3) do not include complex switch translations (*e.g.*, Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop); and (4) do not include a reseller. See, e.g., *Intermodal Number Portability FNPRM*, 18 FCC Red at 23715, para. 45 n.112 (citing North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116 (filed Nov. 29, 2000)).

¹⁵⁴ See *supra* paras. 42-43.

¹⁵⁵ See, e.g., NARUC Reply, CC Docket No. 95-116, at 5 (filed Feb. 23, 2007); Charter Comments, CC Docket No. 95-116, at 4-6 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 1 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 8-9 (filed Feb. 8, 2007); Integra Reply, CC Docket No. 95-116, at 2 (filed Feb. 23, 2007).

¹⁵⁶ See, e.g., Verizon Comments, CC Docket No. 95-116, at 9 (filed Feb. 8, 2007).

¹⁵⁷ See, e.g., Leap Wireless Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007); T-Mobile/Sprint Nextel Petition at 4; California Commission Comments, CC Docket No. 95-116, at 4 (filed Feb. 8, 2007); CTIA Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 5 (filed Feb. 8, 2007).

¹⁵⁸ See, e.g., Letter from Mary McManus, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, Attach. at 3 (filed Apr. 16, 2007).

validate a port request.¹⁵⁹ However, with respect to other categories of simple ports, we note that industry deliberations have not led to consensus on this issue, suggesting that Commission action could be appropriate.¹⁶⁰ For example, T-Mobile and Sprint suggest that the Commission should adopt four data fields: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable).¹⁶¹ We find Petitioners' proposal to be reasonable given that the wireless industry has reached agreement to require only three fields to validate port requests, and note that their proposal falls within the range of the required number of fields proposed by commenters.¹⁶²

48. Thus, we conclude that LNP validation should be based on no more than four fields for simple ports (*i.e.*, wireline-to-wireline, wireless-to-wireless, and intermodal ports), and that those fields should be: (1) 10-digit telephone number; (2) customer account number; (3) 5-digit zip code; and (4) pass code (if applicable). We find that, despite disagreement within the industry on which specific data are necessary to effectuate a port,¹⁶³ there is sufficient basis in the record to support our conclusion that LNP validation for simple ports should be based on no more than four fields. We further conclude that 90 days is sufficient time for affected entities to comply with these LNP validation requirements. We find this implementation period is reasonable, particularly in light of the evidence discussed above that it is common for incumbent LECs to make ongoing changes to their port validation process and that wireless carriers were readily able to implement a reduction in the number of data fields required to validate wireless-to-wireless port requests. Therefore, affected entities must be in compliance with these validation requirements within 90 days of the date of release of this Declaratory Ruling.

49. Some commenters caution the Commission to ensure that the data fields used for validation adequately protect customers from slamming.¹⁶⁴ We conclude that the fields proposed by the Petitioners

¹⁵⁹ See T-Mobile/Sprint Nextel Petition at 4 (wireless providers validating port requests require only the use of customer telephone number, account number, and password (if applicable)).

¹⁶⁰ See, *e.g.*, T-Mobile/Sprint Nextel Reply, CC Docket No. 95-116, at 10 (filed Feb. 23, 2007) (noting that the validation issue has been before the NANC for almost three years and the industry remains deadlocked); Nebraska Commission Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007) (stating that a failure by the Ordering and Billing Forum (OBF) to arrive at a consensus should be the trigger for the Commission to step in and set a standard).

¹⁶¹ See T-Mobile/Sprint Nextel Petition at 7; see also T-Mobile/Sprint Nextel Reply at 15 (clarifying that their validation field recommendation solely applies to simple port requests).

¹⁶² For example, Charter argues that the provision of name, address, and phone number are sufficient data fields to validate ports between carriers. See Charter Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007); see also Verizon July 27, 2007 *Ex Parte* Letter at 2 (stating that Verizon is currently validating the customer on only five fields of information on the number portability request: account number, ported telephone number, state, type of service, and, in some jurisdictions, customer name).

¹⁶³ See, *e.g.*, T-Mobile/Sprint Nextel Petition at 7; Comcast Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007); Embarq Comments, CC Docket No. 95-116, at 2-4, 6 (filed Feb. 8, 2007); MetroPCS Comments, CC Docket No. 95-116, at 8 (filed Feb. 8, 2007); TWTC *et al.* Comments, CC Docket No. 95-116, at 5-7 (filed Feb. 8, 2007); Verizon Comments, CC Docket No. 95-116, at 7-8 (filed Feb. 8, 2007); T-Mobile/Sprint Nextel Reply, CC Docket No. 95-116, at 6 (filed Feb. 23, 2007); Letter from Ann D. Berkowitz, Associate Director, Verizon, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, at 2 (dated July 27, 2007) (Verizon July 27, 2007 *Ex Parte* Letter).

¹⁶⁴ See, *e.g.*, NASUCA Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Embarq Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007). *But see* Verizon Oct. 23, 2007 *Ex Parte* Letter at 3 (arguing that concerns about slamming do not apply equally in the context of service provider changes to and from VoIP service providers). We note that because wireline telephone numbers are generally more centralized, telephone numbers with only slight variations may exist in the same zip code, particularly in rural areas, and thus an inadvertent error in exchanging the customer's telephone number may result in a non-properly validated port. See Embarq Comments at 6 (fearing that a porting-in carrier could transpose the digits of a telephone number and that the incorrect telephone number will also be within the zip code area, resulting in an incorrect port).

will sufficiently protect consumers from slamming, and note that data in the record suggest that complaints about unauthorized ports occur much less frequently for wireless-to-wireless ports, where only three validation fields are used, than for intermodal ports.¹⁶⁵ The record reveals other considerations when defining those specific validation fields. In particular, competitors note that many LNP requests are rejected due to typographical errors or even different conventions in how words are entered in an LSR – such as abbreviating Avenue as “Av.” rather than “Ave.”¹⁶⁶ Based on the record before us, we conclude that there are efficiencies in using numeric or alphanumeric information rather than alphabetic information alone in the validation process to decrease the validation error rate.¹⁶⁷ Thus, we find that the specific validation fields we adopt herein, which rely not on words, but rather rely only on numbers or alphanumeric codes, are appropriate. We are persuaded that the approach we adopt here reasonably balances consumer concerns about slamming with competitors’ interest in ensuring that LNP may not be used in an anticompetitive manner to inhibit consumer choice.

2. Final Regulatory Flexibility Analysis for the *Intermodal Number Portability Order*

50. As discussed above,¹⁶⁸ in its 2003 *Intermodal Number Portability Order*, the Commission clarified that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier’s coverage area overlaps the geographic location in which the wireline number is provisioned, provided that the porting-in carrier maintains the number’s original rate center designation following the port.¹⁶⁹ On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded the *Intermodal Number Portability Order* to the Commission.¹⁷⁰ The court determined that the *Intermodal Number Portability Order* resulted in a legislative rule, and that the Commission had failed to prepare a FRFA regarding the impact of that rule on small entities, as required by the RFA.¹⁷¹ The court accordingly directed the Commission to prepare the required FRFA, and stayed future enforcement of the *Intermodal Number Portability Order* “as applied to carriers that qualify as small entities under the RFA” until the agency prepared and published that analysis.¹⁷² On April 22, 2005, the Commission issued a Public Notice seeking comment on an IRFA of the *Intermodal Number Portability Order*.¹⁷³

¹⁶⁵ See, e.g., T-Mobile/Sprint Nextel Reply, CC Docket No. 95-116, at 13-15 (filed Feb. 23, 2007); Comcast Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007).

¹⁶⁶ See, e.g., Leap Wireless Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (stating that LECs will reject any abbreviation that does not precisely match the data in the customer’s account, causing delay); MetroPCS Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007) (stating that some incumbent LECs reject porting requests for placing a comma in an incorrect place on the LSR); Integra Reply, CC Docket No. 95-116, at 4 (filed Feb. 23, 2007).

¹⁶⁷ We note that the Petitioners propose relying on a customer’s password as a possible validation field. Theoretically, customers could choose a word for use as their password. We do not believe that this would present the same problem as street names, for example, because it would not raise abbreviation concerns.

¹⁶⁸ See *supra* para. 8.

¹⁶⁹ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22.

¹⁷⁰ See *United States Telecom. Ass’n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005).

¹⁷¹ See *id.* at 42-43; see also 5 U.S.C. § 604 (Regulatory Flexibility Act).

¹⁷² *United States Telecom. Ass’n v. FCC*, 400 F.3d at 43.

¹⁷³ See *Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, Public Notice, 20 FCC Rcd 8616 (2005). A full list of comments to the Public Notice is included as Appendix A.

51. In accordance with the requirements of the RFA, we have considered the potential economic impact of the intermodal porting rules on small entities and conclude that wireline carriers qualifying as small entities under the RFA will be required to provide wireline-to-wireless intermodal porting where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.¹⁷⁴ The Commission has prepared a FRFA as directed by the court, which we attach as Appendix D.¹⁷⁵

IV. NOTICE OF PROPOSED RULEMAKING

52. Through this Notice of Proposed Rulemaking (Notice), we consider whether there are additional numbering requirements that we should adopt to benefit customers of telecommunications and interconnected VoIP services. First, we seek comment on whether the Commission should act to extend other numbering-related obligations to interconnected VoIP providers. Second, we seek comment on whether we should adopt specific rules regarding the LNP validation process and porting interval lengths.

A. Interconnected VoIP Provider Numbering Obligations

53. As discussed above, we take steps in this Order to ensure that customers of interconnected VoIP services receive the benefits of LNP, and to minimize marketplace distortions arising from regulatory advantage. We seek comment on any other issues associated with the implementation of LNP for users of interconnected VoIP services. We also seek comment on whether any of our numbering requirements, in addition to LNP, should be extended to interconnected VoIP providers. For example, we seek comment on whether the Commission should require interconnected VoIP providers to comply with N11 code assignments.¹⁷⁶ As described in the Order above, the Commission already requires

¹⁷⁴ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23698, para. 1. We note that a carrier may petition the Commission for additional time or waiver of the intermodal porting requirements if it can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules. See 47 C.F.R. §§ 1.3, 52.25(e). In addition, under section 251(f)(2) of the Act, a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition the appropriate state commission for suspension or modification of the requirements of section 251(b). See 47 U.S.C. § 251(f)(2).

¹⁷⁵ Further, in light of the court's determination that the *Intermodal Number Portability Order* resulted in a legislative rule, we elect to amend our rules to expressly incorporate the Commission's holding. To this end, a new subsection (h) is added to section 52.23 of the Commission's rules. The text of the new subsection is provided in Appendix B of this Order. We note that this addition to our rules is non-substantive, in that it merely incorporates in the Code of Federal Regulations the requirements previously adopted in the *Intermodal Number Portability Order*.

¹⁷⁶ See, e.g., Arizona Commission Comments, WC Docket No. 04-36, at 17. N11 codes are abbreviated dialing arrangements that enable callers to access special services by dialing only three digits. The network must be pre-programmed to translate the three-digit code into the appropriate seven- or ten-digit sequence and route the call accordingly. Because there are only eight available N11 codes, N11 codes are among the scarcest of numbering resources under the Commission's jurisdiction. N11 codes 211, 311, 411, 511, 611, 711, 811, and 911 are available for assignment by the Commission. N11 codes "011" and "111" are unavailable because "0" and "1" are used for switching and routing purposes. To date, the Commission has assigned six N11 codes – 211, 311, 511, 711, 811, and 911. See *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572 (1997) (assigning 311 for non-emergency police and other governmental services); *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Second Report and Order, 15 FCC Rcd 15188 (2000) (assigning 711 for telephone relay services for the hearing impaired); *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Third Report and Order and Order on Reconsideration, 15 FCC Rcd 16753 (2000) (assigning 211 for information and referral services and 511 for travel and information services); *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Fourth Report and Order and Third Notice of Proposed Rulemaking, 15 FCC Rcd 17079 (2000) (assigning 911 as the national emergency number); *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Sixth

(continued....)

interconnected VoIP providers to supply 911 emergency calling capabilities to their customers whose service connects with the PSTN and to offer 711 abbreviated dialing for access to telephone relay services.¹⁷⁷ Commenters should provide information on the technical feasibility of a requirement to comply with the other N11 code assignments. We also seek comment on the benefits and burdens, including the burdens on small entities, of requiring interconnected VoIP providers to comply with N11 code assignments or other numbering requirements.

B. LNP Process Requirements

54. As the Commission has found, it is critical that customers be able to port their telephone numbers in an efficient manner in order for LNP to fulfill its promise of giving “customers flexibility in the quality, price, and variety of telecommunications services.”¹⁷⁸ Although customers have had the option to port numbers between their telephone service providers for a number of years, the length of time for ports to occur and other difficulties with the porting process may hinder such options. Therefore, we seek comment on whether the Commission should take steps to mandate or modify certain elements of the porting process to ensure the efficiency and effectiveness of LNP for U.S. telephone consumers.

55. We find this to be a significant concern both due to the Commission’s efforts as a general matter to ensure “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another,”¹⁷⁹ as well as due to the important role intermodal providers play in telecommunications competition. Indeed, incumbent LECs have sought to rely on the presence of telephone competition from wireless providers and cable operators when seeking relief from regulatory obligations.¹⁸⁰ To help enable such intermodal competition, and the deregulation that can result from such competition, it thus is important for the Commission to ensure the efficiency and effectiveness of LNP, which “eliminates one major disincentive to switch carriers” and thus facilitates “the successful entrance of new service providers.”¹⁸¹ However, we do not limit our inquiry below specifically to intermodal LNP but seek comment on the need for Commission requirements on LNP processes in other contexts as well.

56. Our conclusion, above, that carriers can require no more than four fields for validation of a simple port, and what information those fields should contain, addresses the consideration of the appropriate amount and type of information necessary to effectuate a port. We are also interested in comments about how the information required for the validation fields we adopt herein affects the validation process, including any other ways that those validation fields could minimize the error rates or

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Report and Order, 20 FCC Rcd 5539 (2005) (designating 811 for state “One Call” notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act of 2002). The remaining N11 codes – 411 and 611 – are widely used by carriers, but have not been assigned by the Commission for nationwide use. N11 codes that have not been assigned nationally can continue to be assigned for local uses, provided that such use can be discontinued on short notice. *See* North American Numbering Plan Administrator website, *available at* <http://www.nanpa.com>.

¹⁷⁷ *See VoIP 911 Order*, 20 FCC Rcd at 10246, para. 1; *TRS Order*, 22 FCC Rcd at 11296-97, paras. 42-43 (2007).

¹⁷⁸ *First Local Number Portability Order*, 11 FCC Rcd at 8368, para. 30.

¹⁷⁹ 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l).

¹⁸⁰ *See, e.g., Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5231, para. 47 (2007).

¹⁸¹ *First Local Number Portability Order*, 11 FCC Rcd at 8434, para. 157.

further reduce the amount of information that a porting-in entity must request from the porting-out entity prior to submitting the simple port request.¹⁸² Further, we seek comment on any other considerations that the Commission should evaluate in the simple port validation process.

57. The evidence in the record also shows that delays in the porting process can arise when the porting-out carrier fails to identify all errors in an LSR at once.¹⁸³ If a provider identifies errors one at a time, this necessitates multiple resubmissions of the LSR, and delays the porting process. We agree with commenters such as AT&T that it may not be possible for providers to identify all errors at once, although the porting process will proceed most efficiently if providers identify as many errors as possible at a given time.¹⁸⁴ We seek comment on whether the Commission should adopt a requirement that carriers identify all errors possible in a given LSR and describe the basis for rejection when rejecting a port request. Is such a Commission requirement still necessary since the Commission has mandated four specific data fields to be used for simple port validation?

58. Finally, we seek comment on the benefits and burdens, including the burdens on small entities, of the specific requirements on the validation process proposed above, and any other such requirements.

59. *Porting Intervals.* We tentatively conclude that the Commission should adopt rules reducing the porting interval for simple port requests.¹⁸⁵ We seek comment on that tentative conclusion, and on whether the Commission should establish time limits on the porting process for all types of simple port requests (*i.e.*, wireline-to-wireline ports, wireless-to-wireless ports, and intermodal ports) or just certain types of ports. As noted above, for example, the wireless industry has established a voluntary standard of two and one-half hours for wireless-to-wireless ports.¹⁸⁶ We seek comment on whether the Commission should adopt a rule codifying this standard.

60. We also tentatively conclude that the Commission should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically, to a 48-hour porting interval. As we note below, the wireless industry has been successful in streamlining the validation process for wireless-to-wireless porting, and we encourage the industry to evaluate whether similar streamlining measures would work for intermodal or wireline-to-wireline porting.¹⁸⁷ We note, moreover, that pending resolution of this rulemaking proceeding, providers remain free to seek enforcement action

¹⁸² See, *e.g.*, T-Mobile/Sprint Nextel Petition at 4 (raising concerns about carriers rejecting port requests based on incorrect abbreviations); Leap Wireless Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007) (same); MetroPCS Comments, CC Docket No. 95-116, at 6 (filed Feb. 8, 2007) (arguing that some incumbent LECs reject porting requests based on misplaced commas); T-Mobile/Sprint Nextel Reply, CC Docket No. 95-116, at 5-7 (filed Feb. 23, 2007) (stating that some porting-out carriers require the porting-in carrier to request a customer service record (CSR) prior to submitting an LSR or even require an additional “address validation step” before a porting-in carrier can order the CSR).

¹⁸³ See, *e.g.*, Charter Comments, CC Docket No. 95-116, at 5-6 (filed Feb. 8, 2007).

¹⁸⁴ See, *e.g.*, Verizon July 27, 2007 *Ex Parte* Letter at 2 (arguing that it is not reasonable to expect carriers to port a telephone number where there are errors in the fields on the number portability request form).

¹⁸⁵ See *supra* note 153 (defining simple ports).

¹⁸⁶ See *Intermodal Number Porting Interval Second Further Notice*, 19 FCC Rcd at 18515-16, para. 2.

¹⁸⁷ See T-Mobile/Sprint Nextel Petition at 4 (wireless providers validating port requests require only the use of customer telephone number, account number, and password (if applicable)); see also *Intermodal Number Porting Interval Second Further Notice*, 19 FCC Rcd at 18515-16, para. 2 (noting that the wireless industry has established a voluntary standard of two and one half hours for wireless-to-wireless ports).

against a porting-out carrier that requests validation information that appears to obstruct or delay the porting process.¹⁸⁸

61. For wireline-to-wireline simple ports, the Commission adopted the NANC's 1997 recommendation of a four business day porting interval.¹⁸⁹ This four day interval also applies to wireline-to-wireless intermodal simple ports.¹⁹⁰ It has been over ten years since the Commission reassessed the porting interval for wireline-to-wireline ports, and commenters suggest that advances in technology allow for the four day porting interval to be reduced.¹⁹¹ For intermodal porting intervals, the Commission has twice sought comment on whether the porting interval could be reduced.¹⁹² Most recently, the Commission specifically sought comment on detailed NANC proposals for shortening the intermodal porting interval, which included specific timelines for the porting process.¹⁹³

62. While some commenters advocate retaining the current porting intervals, other providers assert that shorter intervals are possible. For example, Comcast asserts that a "next day" standard for wireline ports that, in most cases, would not exceed 36 hours is more appropriate in light of technological advancements and recent competitive developments.¹⁹⁴ Other commenters recommend refreshing the record in the *Intermodal Number Portability FNPRM* and considering the NANC's proposal that would effectively reduce the porting interval to 53 hours.¹⁹⁵ Commenters seeking shorter intervals point out the benefits to consumers and competition arising when ports can occur more quickly.¹⁹⁶

63. Given that the industry has been unable to reach consensus on an updated industry standard for wireline-to-wireline and intermodal simple ports,¹⁹⁷ we tentatively conclude that the Commission should adopt rules regarding a reduced porting interval and allow the industry to work through the actual implications of such a timeline. In particular, we tentatively conclude that we should adopt a 48-hour porting interval, as it falls between the range of proposed shorter intervals. In setting this interval, we hope to encourage industry discussion and consensus. We seek comment on our tentative conclusions, and whether there are any technical impediments or advances that affect the overall length of the porting interval such that we should adopt different porting intervals for particular types of simple ports (*e.g.*,

¹⁸⁸ See, *e.g.*, Qwest Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007). See generally 47 U.S.C. § 208; 47 U.S.C. § 503(b)(5) (granting the Commission authority to assess a forfeiture penalty against any person who is not a common carrier).

¹⁸⁹ See *Intermodal Number Porting Interval Second Further Notice*, 19 FCC Rcd at 18515, para. 2.

¹⁹⁰ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23712-13, para. 38; see also *Intermodal Number Porting Interval Second Further Notice*, 19 FCC Rcd at 18519, para. 10.

¹⁹¹ See, *e.g.*, Comcast Comments, CC Docket No. 95-116, at 3 (filed Feb. 8, 2007).

¹⁹² See *Intermodal Number Portability FNPRM*, 18 FCC Rcd at 23715-17, paras. 45-51; *Intermodal Number Porting Interval Second Further Notice*, 19 FCC Rcd at 18519-21, paras. 10-14.

¹⁹³ See *Intermodal Number Porting Interval Second Further Notice*, 19 FCC Rcd at 18518, para. 7 (identifying the NANC proposals).

¹⁹⁴ In particular, Comcast proposes the following: (i) A port request received between 7 a.m. and 2 p.m. on Day 1 would be activated on Day 2 at 12:01 a.m.; and (ii) A port request received after 2 p.m. on Day 1 could be activated on Day 3 no later than 12:01 a.m. Comcast Comments, CC Docket No. 95-116, at 9 (filed Feb. 8, 2007). Comcast notes that this interval is similar to one proposed by Sprint in 2004 in response to the *Intermodal Number Portability FNPRM*. See *id.*

¹⁹⁵ See, *e.g.*, Qwest Comments, CC Docket No. 95-116, at 5 (filed Feb. 8, 2007); Verizon Comments, CC Docket No. 95-116, at 2 (filed Feb. 8, 2007); Comcast Comments, CC Docket No. 95-116, at 3, 8-9 (filed Feb. 8, 2007).

¹⁹⁶ See, *e.g.*, Comcast Comments, CC Docket No. 95-116, at 2-3 (filed Feb. 8, 2007).

¹⁹⁷ See, *e.g.*, T-Mobile/Sprint Nextel Reply, CC Docket No. 95-116, at 2 (filed Feb. 23, 2007).

wireline-to-wireline, wireline-to-wireless, wireless-to-wireline). Further, we seek comment on how the Commission should define the various porting interval timelines in terms of operating hours.¹⁹⁸

64. Finally, we seek comment on the benefits and burdens, including the burdens on small entities, of adopting rules regarding porting intervals for all types of simple port requests.

65. We would encourage interested parties to take into account the fact that as technologies and business practices evolve we would expect that the porting interval would decrease in order to provide consumers as quick and efficient a porting process as possible. We look forward to a complete record on the appropriate porting interval consistent with the shortest reasonable time period.

66. *Other LNP Process Issues.* We note that commenters identify a number of other concerns regarding the LNP process that they assert are hindering the ability of consumers to take advantage of LNP. For example, Charter comments that certain carriers' processes result in cancellation of a subscriber dial tone for port requests that are delayed for operational reasons.¹⁹⁹ Charter also argues that carriers should be (1) required to provide the basis for rejecting a port request at the time of that rejection; (2) required to provide affirmative notice of all changes to their porting requirements and process; and (3) prohibited from making *ad hoc* changes to their procedures.²⁰⁰ Charter also argues that the Commission should declare that interconnection agreements are not a necessary precondition to effectuating wireline-to-wireline ports.²⁰¹ We seek comment on these and any other concerns regarding the LNP process more generally, including the port validation process and porting intervals for non-simple ports.

C. New Dockets

67. In this Notice, we open two new dockets – WC Docket No. 07-243 and WC Docket No. 07-244. All filings made in response to the Notice section on interconnected VoIP provider numbering obligations should be filed in WC Docket No. 07-243. All filings made in response to the Notice sections on port request validation and porting intervals should be filed in WC Docket No. 07-244.

V. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

68. The rulemaking this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁰² Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence

¹⁹⁸ See, e.g., Letter from John R. Hoffman, Chairman, NANC, to Lawrence C. Strickling, Chief, Common Carrier Bureau, FCC, CC Docket No. 95-116, Attach. at 20-21 (filed Nov. 4, 1999) (detailing agreed upon operating hours and holiday schedule for time-dependent operations for the Numbering Portability Administration Center).

¹⁹⁹ Charter Comments, CC Docket No. 95-116, at 7-8 (filed Feb. 8, 2007); see also Integra Reply, CC Docket No. 95-116, at 5 (filed Feb. 23, 2007).

²⁰⁰ Charter Comments, CC Docket No. 95-116, at 9-10 (filed Feb. 8, 2007).

²⁰¹ *Id.* at 14-15; see also *Intermodal Number Portability Order*, 18 FCC Rcd at 23711, para. 34 (finding that interconnection agreements are not necessary for the intermodal porting process).

²⁰² 47 C.F.R. §§ 1.200 *et seq.*

description of the views and arguments presented generally is required.²⁰³ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.²⁰⁴

B. Comment Filing Procedures

69. Pursuant to sections 1.415 and 1.419 of the Commission's rules,²⁰⁵ interested parties may file comments and reply comments regarding the Notice on or before the dates indicated on the first page of this document. **All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 07-243 or WC Docket No. 07-244. All filings made in response to the Notice section on interconnected VoIP provider numbering obligations should be filed in WC Docket No. 07-243. All filings made in response to the Notice sections on port request validation and porting intervals should be filed in WC Docket No. 07-244.** Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for CC Docket No. 95-116. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

²⁰³ See 47 C.F.R. § 1.1206(b)(2).

²⁰⁴ 47 C.F.R. § 1.1206(b).

²⁰⁵ 47 C.F.R. §§ 1.415, 1.419.

70. Parties should send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

71. Documents in WC Docket Nos. 07-243, 07-244, and 04-36, and CC Docket Nos. 95-116 and 99-200 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

C. Final Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the Commission has prepared Final Regulatory Flexibility Analyses (FRFA) of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this document. The FRFA related to Part III.A is set forth in Appendix C, and the FRFA related to Part III.B.2 is set forth in Appendix D.

D. Initial Regulatory Flexibility Analysis

73. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix E. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided below in Appendix E.

E. Paperwork Reduction Act

74. This Order contains new or modified information collection requirements subject the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

75. In this Order, the Commission has assessed the effects of imposing LNP and numbering administration contribution requirements on interconnected VoIP providers, and finds that to the extent that interconnected VoIP providers are not already filing FCC Form 499-A annually for other purposes, the information collection burden of doing so in regards to small business concerns will be minimal. Thus, we do not adopt a varied implementation schedule for these requirements.

76. This Notice does not contain proposed information collection(s) subject to the PRA. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. *See* 44 U.S.C. § 3506(c)(4).

F. Congressional Review Act

77. The Commission will send a copy of this Report and Order, Order on Remand, and Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA). *See* 5 U.S.C. § 801(a)(1)(A).

G. Accessible Formats

78. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

VI. ORDERING CLAUSES

79. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 251, 303(r), the Report and Order in WC Docket No. 04-36 and CC Docket Nos. 95-116 and 99-200 IS ADOPTED, and that Part 52 of the Commission's Rules, 47 C.F.R. Parts 52, is amended as set forth in Appendix B. The Report and Order shall become effective 30 days after publication in the Federal Register. The information collection requirements contained in the Report and Order will become effective following OMB approval.

80. IT IS FURTHER ORDERED that pursuant to section 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 251, 303(r), the Order on Remand in CC Docket No. 95-116 IS ADOPTED. The Order on Remand shall become effective 30 days after publication in the Federal Register.

81. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 251, 303(r), the Notice of Proposed Rulemaking in WC Docket Nos. 07-243 and 07-244 IS ADOPTED.

82. IT IS FURTHER ORDERED that pursuant to sections 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 251, 303(r), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, the Petition for Declaratory Rulemaking filed by T-Mobile USA, Inc. and Sprint Nextel Corporation on December 20, 2006 IS GRANTED to the extent described herein and otherwise IS DENIED.

83. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, including the two Final Regulatory Flexibility Analyses and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Comments in WC Docket No. 04-36

Comments	Abbreviation
8X8, Inc.	8X8
AARP	AARP
ACN Communications Services, Inc.	ACN
Ad Hoc Telecommunications Users Committee	Ad Hoc
Alcatel North America	Alcatel
Alliance for Public Technology	APT
America's Rural Consortium	ARC
American Foundation for the Blind	AFB
American Public Communications Council	APCC
Amherst, Massachusetts Cable Advisory Committee	Amherst CAC
Arizona Corporation Commission	Arizona Commission
Arctic Slope Telephone Association Cooperative, Inc. Cellular Mobile Systems of St. Cloud, LLC d/b/a Cellular 2000 Comanche County Telephone, Inc. DeKalb Telephone Cooperative, Inc. d/b/a DTC Communications Grand River Mutual Telephone Corporation Interstate 35 Telephone Company KanOkla Telephone Association, Inc. Siskiyou Telephone Company Uintah Basin Telecommunications Association, Inc. Vermont Telephone Company, Inc. Wheat State Telephone, Inc.	Arctic Slope <i>et al.</i>
Association for Communications Technology Professionals in Higher Education	ACUTA
Association for Local Telecommunications Services	ALTS
Association of Public-Safety Communications Officials- International, Inc.	APCO
AT&T Corporation	AT&T
Attorney General of the State of New York	New York Attorney General
Avaya, Inc.	Avaya
BellSouth Corporation	BellSouth
Bend Broadband Cebridge Connections, Inc. Insight Communications Company, Inc. Susquehanna Communication	Bend Broadband <i>et al.</i>
Boulder Regional Emergency Telephone Service Authority	BRETSA
BT Americas Inc.	BTA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Cbeyond Communications, LLC GlobalCom, Inc. MPower Communications, Corp.	Cbeyond <i>et al.</i>
CenturyTel, Inc.	CenturyTel

Charter Communications	Charter
Cheyenne River Sioux Tribe Telephone Authority	Cheyenne Telephone Authority
Cisco Systems, Inc.	Cisco
Citizens Utility Board	CUB
City and County of San Francisco	San Francisco
City of New York	New York City
Comcast Corporation	Comcast
Communication Service for the Deaf, Inc.	CSD
Communications Workers of America	CWA
CompTel/ASCENT	CompTel
Computer & Communications Industry Association	CCIA
Computing Technology Industry Association	CompTIA
Consumer Electronics Association	CEA
Covad Communications	Covad
Cox Communications, Inc.	Cox
CTIA-The Wireless Association	CTIA
Department of Homeland Security	DHS
DialPad Communication, Inc. ICG Communications, Inc. Qovia, Inc. VoicePulse, Inc.	Dialpad <i>et al.</i>
DJE Teleconsulting, LLC	DJE
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
EDUCAUSE	EDUCAUSE
Electronic Frontier Foundation	EFF
Enterprise Communications Association	ECA
Federation for Economically Rational Utility Policy	FERUP
Francois D. Menard	Menard
Frontier and Citizens Telephone Companies	Frontier/Citizens
General Communications, Inc.	GCI
Global Crossing North America, Inc.	Global Crossing
GVNW Consulting, Inc.	GVNW
ICORE, Inc.	ICORE
IEEE-USA	IEEE-USA
Illinois Commerce Commission	Illinois Commerce Commission
Inclusive Technologies	Inclusive Technologies
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	ITAA
Information Technology Industry Council	ITIC
Interstate Telcom Consulting, Inc.	ITCI
Ionary Consulting	Ionary
Iowa Utilities Board	Iowa Commission
King County E911 Program	King County
Level 3 Communications LLC	Level 3
Lucent Technologies Inc.	Lucent Technologies
Maine Public Utilities Commissioners	Maine Commissioners
MCI	MCI
Microsoft Corporation	Microsoft
Minnesota Public Utilities Commission	Minnesota Commission

Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of Regulatory Utility Commission	NARUC
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Consumers League	NCL
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
National Governors Association	NGA
National Grange	National Grange
National Telecommunications Cooperative Association	NTCA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Board of Public Utilities	New Jersey Commission
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
NexVortex, Inc.	nexVortex
Nortel Networks	Nortel
Nuvio Corporation	Nuvio
Office of Advocacy, U.S. Small Business Administration	SBA
Office of the Attorney General of Texas	Texas Attorney General
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Ohio Public Utilities Commission	Ohio PUC
Omnitor	Omnitor
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
People of the State of California and the California Public Utilities Commission	California Commission
Public Service Commission of the State of Missouri	Missouri Commission
Pulver.com	pulver.com

Qwest Communications International Inc.	Qwest
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
Rural Independent Competitive Alliance	RICA
SBC Communications, Inc.	SBC
Self Help for Hard of Hearing People	SHHHP
Skype, Inc.	Skype
Sonic.net, Inc.	Sonic.net
SPI Solutions, Inc.	SPI Solutions
Spokane County 911 Communications	Spokane County 911
Sprint Corporation	Sprint
TCA, Inc. – Telecom Consulting Associates	TCA
Telecommunications for the Deaf, Inc	TDI
Telecommunications Industry Association	TIA
Tellme Networks, Inc	Tellme Networks
Tennessee Regulatory Authority	TRA
Texas Coalition of Cities for Utility Issues	TCCFUI
Texas Commission on State Emergency Communications.	TCSEC
Texas Department of Information Resources	Texas DIR
Time Warner Inc.	Time Warner
Time Warner Telecom	TWTC
TracFone Wireless, Inc.	TracFone
UniPoint Enhanced Services Inc. d/b/a PointOne	PointOne
United States Conference of Catholic Bishops Alliance for Community Media Appalachian People’s Actions Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
United Telecom Council The United Power Line Council	UTC <i>et al.</i>
USA Datanet Corporation	USAD Datanet
Utah Division of Public Utilities	Utah Commission
Valor Telecommunications of Texas, L.P. and Iowa Telecommunications Services, Inc.	Valor <i>et al.</i>
VeriSign, Inc.	VeriSign
Verizon Telephone Company	Verizon
Vermont Public Service Board	Vermont
Virgin Mobile USA, LLC	Virgin Mobile
Virginia State Corporation Commission	Virginia Commission
Voice on the Net Coalition	VON Coalition
Vonage Holdings Corp	Vonage
Western Telecommunications Alliance	WTA
WilTel Communications, LLC	WilTel
Wisconsin Electric Power Company Wisconsin Gas	Wisconsin Electric <i>et al.</i>

Yellow Pages Integrated Media Association	YPIMA
Z-Tel Communications, Inc.	Z-Tel

Reply Comments in WC Docket No. 04-36

<u>Reply Comments</u>	<u>Abbreviation</u>
8X8, Inc.	8X8
Ad Hoc Telecom Manufacturer Coalition	Ad Hoc Telecom Manufacturers Coalition
Ad Hoc Telecommunications Users Committee	Ad Hoc
Adam D. Thierer, Director of Telecommunications Studies, Cato Institute	Thierer
Alcatel North America	Alcatel
Alliance for Public Technology et al.	APT <i>et al.</i>
American Cable Association	ACA
American Electric Power Service Corporation Duke Energy Corporation Xcel Energy Inc.	American Electric Power <i>et al.</i>
Association for Local Telecommunications Services	ALTS
AT&T Corp.	AT&T
Avaya Inc.	Avaya
BellSouth Corporation	BellSouth
Broadband Service Providers Association	BSPA
Cablevision Systems Corp.	Cablevision
Callipso Corporation	Callipso
Central Station Alarm Association	CSAA
Cingular Wireless LLC	Cingular
Cisco Systems, Inc.	Cisco
City and County of San Francisco	San Francisco
Comcast Corporation	Comcast
CompTel/Ascent	CompTel
Consumer Electronics Association	CEA
Consumer Federation of America Consumers Union	CFA <i>et al.</i>
Covad Communications	Covad
CTC Communications Corp.	CTS
CTIA-The Wireless Association	CTIA
Department of Defense	DoD
Donald Clark Jackson	Jackson
EarthLink, Inc.	EarthLink
Educause	Educause
Enterprise Communications Association	ECA
Ericsson Inc.	Ericsson
Florida Public Service Commission	Florida Commission
Francois D. Menard	Menard
General Communication (GCI)	GCI
Global Crossing North America, Inc.	Global Crossing
Independent Telephone & Telecommunications Alliance	ITTA
Information Technology Association of America	Information Technology Association of America
Intergovernmental Advisory Committee	IAC
Intrado Inc.	Intrado

Knology, Inc.	Knology
Level 3 Communications LLC	Level 3
Massachusetts Office of the Attorney General	Massachusetts Attorney General
MCI	MCI
Montana Public Service Commission	Montana Commission
Motorola, Inc.	Motorola
National Association of State Utility Consumer Advocates	NASUCA
National Association of Telecommunications Officers and Advisors National League of Cities National Association of Counties U.S. Conference of Mayors National Association of Towns and Townships Texas Coalition of Cities for Utility Issues Washington Association of Telecommunications Officers and Advisors Greater Metro Telecommunications Consortium Mr. Hood Cable Regulatory Commission Metropolitan Washington Council of Governments Rainier Communications Commission City of Philadelphia City of Tacoma, Washington Montgomery County, Maryland	NATOA <i>et al.</i>
National Cable & Telecommunications Association	NCTA
National Emergency Number Association	NENA
National Exchange Carrier Association, Inc.	NECA
Nebraska Public Service Commission	Nebraska Commission
Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
Net2Phone, Inc.	Net2Phone
New Jersey Division of the Ratepayer Advocate	New Jersey Ratepayer Advocate
New York State Department of Public Service	New York Commission
Nextel Communications, Inc.	Nextel
Nuvio Corporation	Nuvio
Office of the People's Counsel for the District of Columbia	D.C. Counsel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Pac-West Telecomm, Inc.	Pac-West
Pennsylvania Public Utility Commission	Pennsylvania Commission
Public Service Commission of Wisconsin	Wisconsin Commission
Qwest Communications International Inc.	Qwest
Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University	Mercatus Center
Rehabilitation Engineering Research Center on Telecommunications Access	RERCTA
RNKL, Inc. d/b/a RNK Telecom	RNK
Rural Independent Competitive Alliance	RICA
SBC Communications Inc.	SBC
Skype, Inc.	Skype
Southern Communications Services, Inc. d/b/a Southern	Southern LINC

LINC	
Sprint Corporation	Sprint
Telecommunications Industry Association	TIA
Tellme Networks, Inc	Tellme Networks
Texas Statewide Telephone Cooperative, Inc.	Texas Statewide Telephone Cooperative
Time Warner Telecom, Inc.	TWTC
T-Mobile USA, Inc.	T-Mobile
TracFone Wireless, Inc.	TracFone
United States Conference of Catholic Bishops Alliance for Community Media Appalachian Peoples' Action Coalition Center for Digital Democracy Consumer Action Edgemont Neighborhood Coalition Migrant Legal Action Program	USCCB <i>et al.</i>
United States Department of Justice	DOJ
United States Telecom Association	USTA
USA Datanet Corporation	USA Datanet
Utah Division of Public Utilities	Utah Commission
VeriSign, Inc.	VeriSign
Verizon Telephone Companies	Verizon
Voice on the Net Coalition	VON Coalition
Wisconsin Department of Public Instruction	Wisconsin Department of Public Instruction

**Comments in Response to the T-Mobile/Sprint Nextel Petition
CC Docket No. 95-116**

Comments	Abbreviation
AT&T Inc.	AT&T
California Public Utilities Commission and the People of the State of California	California Commission
Charter Communications, Inc.	Charter
Comcast Corporation and its affiliates	Comcast
CTIA – The Wireless Association®	CTIA
The Embarq Local Operation Companies	Embarq
Iowa Utilities Board	Iowa Utilities Board
Leap Wireless International, Inc. and its Cricket subsidiaries	Leap Wireless
MetroPCS Communications, Inc.	MetroPCS
National Association of State Utility Consumer Advocates	NASUCA
Nebraska Public Service Commission	Nebraska Commission
PCIA – The Wireless Infrastructure Association	PCIA
Qwest Corporation and Qwest Communications Corporation	Qwest
Time Warner Telecom Inc., Cbeyond, Inc. and One Communications Corp.	TWTC <i>et al.</i>
United States Cellular Corporation	USCC
The regulated, wholly owned subsidiaries of Verizon Communications, Inc.	Verizon

**Reply Comments in Response to the T-Mobile/Sprint Nextel Petition
CC Docket No. 95-116**

Reply Comments	Abbreviation
Integra Telecom, Inc.	Integra
Level 3 Communications, LLC	Level 3
National Association of Regulatory Utility Commissioners	NARUC
National Association of State Utility Consumer Advocates	NASUCA
T-Mobile USA, Inc. and Sprint Nextel Corporation	T-Mobile/Sprint Nextel
United States Telecom Association	USTA

**Comments in Response to *Intermodal Number Portability Order* IRFA
CC Docket No. 95-116**

Comments	Abbreviation
Alexicon Telecommunications Consulting	Alexicon
Central Texas Telephone Cooperative, Inc., Chariton Valley Telephone Corporation, Comanche County Telephone Company, Inc., Kaplan Telephone Company, Inc., Leaco Rural Telephone Cooperative, Inc., Valley Telephone Cooperative, Inc.	Central Texas Telephone Cooperative <i>et al.</i>
CTIA – The Wireless Association®	CTIA
Iowa Utilities Board	Iowa Utilities Board
John Staurulakis, Inc.	John Staurulakis
Missouri Small Telephone Company Group	Missouri Small Telephone Company Group
Montana Small Rural Independents	Montana Small Rural Independents
Montana Independent Telecommunications Systems	Montana Independent Telecommunications Systems
National Telecommunications Cooperative Association & Organization for the Promotion and Advancement of Small Telecommunications Companies	NTCA/OPASTCO
The Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
NTC Communications, L.L.C.	NTC Communications
Rural Iowa Independent Telephone Association	Rural Iowa Independent Telephone Association
Office of Advocacy, U.S. Small Business Administration	Office of Advocacy, U.S. Small Business Administration
South Dakota Telecommunications Association	South Dakota Telecommunications Association
Sprint Nextel Corporation	Sprint Nextel
United States Telecom Association	USTA
Verizon Wireless	Verizon Wireless

**Reply Comments in Response to *Intermodal Number Portability Order* IRFA
CC Docket No. 95-116**

Reply Comments	Abbreviation
Central Texas Telephone Cooperative, Inc., Chariton Valley Telephone Corporation, Comanche County	Central Texas Telephone Cooperative <i>et al.</i>

Telephone Company, Inc., Kaplan Telephone Company, Inc., Leaco Rural Telephone Cooperative, Inc., Valley Telephone Cooperative, Inc.	
CTIA – The Wireless Association [®]	CTIA
Dobson Cellular Systems, Inc.	Dobson Cellular
Missouri Small Telephone Company Group	Missouri Small Telephone Company Group
Montana Independent Telecommunications Systems	Montana Independent Telecommunications System
National Telecommunications Cooperative Association & Organization for the Promotion and Advancement of Small Telecommunications Companies	NTCA/OPASTCO
The Nebraska Rural Independent Companies	Nebraska Rural Independent Companies
South Dakota Telecommunications Association	South Dakota Telecommunications Association
Sprint Nextel Corporation	Sprint Nextel
TCA, Inc.	TCA
T-Mobile USA, Inc.	T-Mobile
United States Telecom Association	USTA
Verizon Wireless	Verizon Wireless

APPENDIX B

Final Rules

Part 52 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 52 – NUMBERING

1. The authority citation for part 52 is amended as follows:

Authority: Secs. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154 and 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-27, 251-52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201-05, 207-09, 218, 225-27, 251-52, 271 and 332 unless otherwise noted.

2. Section 52.12(a)(1)(i) is amended to read as follows:

* * * * *

(a)(1) * * *

(i) The NANPA and B&C Agent may not be an affiliate of any telecommunications service provider(s) as defined in the Telecommunications Act of 1996, or an affiliate of any interconnected VoIP provider as that term is defined in § 52.21(h). “Affiliate” is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly—

* * * * *

3. Section 52.16 is amended by adding the following paragraph:

* * * * *

(g) For the purposes of this rule, the term “carrier(s)” shall include interconnected VoIP providers as that term is defined in § 52.21(h).

4. Section 52.17 is amended by adding the following paragraph:

* * * * *

(c) For the purposes of this rule, the term “telecommunications carrier” or “carrier” shall include interconnected VoIP providers as that term is defined in § 52.21(h).

5. Section 52.21 is amended by redesignating paragraphs (h) through (r) as paragraphs (i) through (s), and by adding new paragraph (h) to read as follows:

* * * * *

(h) The term “interconnected VoIP provider” is an entity that provides interconnected VoIP service as that term is defined in section 9.3 of these rules.

* * * * *

6. Section 52.23 is amended by adding the following paragraph:

* * * * *

(h)(1) Porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's "coverage area," as defined in paragraph (h)(2), overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.

(2) The wireless "coverage area" is defined as the area in which wireless service can be received from the wireless carrier.

7. Section 52.32 is amended by adding the following paragraph:

* * * * *

(e) For the purposes of this rule, the term "telecommunications carrier" shall include interconnected VoIP providers as that term is defined in § 52.21(h); and "telecommunications service" shall include "interconnected VoIP service" as that term is defined in section 9.3 of these rules.

8. Section 52.33(b) is amended to read as follows:

* * * * *

(b) All interconnected VoIP providers and telecommunications carriers other than incumbent local exchange carriers may recover their number portability costs in any manner consistent with applicable state and federal laws and regulations.

9. Section 52.34 is added to read as follows:

§ 52.34 Obligations regarding local number porting to and from interconnected VoIP providers.

(a) An interconnected VoIP provider must facilitate an end-user customer's valid number portability request, as it is defined in this subpart, either to or from a telecommunications carrier or another interconnected VoIP provider. "Facilitate" is defined as the interconnected VoIP providers' affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through the telecommunications carriers, if any, that it relies on to obtain numbering resources, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number.

(b) An interconnected VoIP provider may not enter into any agreement that would prohibit an end-user customer from porting between interconnected VoIP providers, or to or from a telecommunications carrier.

APPENDIX C

Final Regulatory Flexibility Analysis
(Interconnected VoIP Services)

WC Docket No. 04-36

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *IP-Enabled Services Notice* in WC Docket 04-36.² The Commission sought written public comment on the proposals in the notice, including comment on the IRFA.³ We received comments specifically directed toward the IRFA from three commenters in WC Docket No. 04-36. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

A. Need for, and Objectives of, the Rules

2. This Report and Order extends LNP obligations to interconnected voice over Internet Protocol (VoIP) providers to ensure that customers of such VoIP providers may port their North American Numbering Plan (NANP) telephone numbers when changing providers. Consumers will now be able to take advantage of new telephone services without losing their telephone numbers, which should in turn facilitate greater competition among telephony providers by allowing customers to respond to price and service changes. Additionally, this Report and Order extends to interconnected VoIP providers the obligation to contribute to shared numbering administration and number portability costs. We believe these steps we take to ensure regulatory parity among providers of similar services will minimize marketplace distortions arising from regulatory advantage.

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

3. In this section, we respond to comments filed in response to the IRFA.⁵ To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Report and Order.

4. The Small Business Administration (SBA) comments that the Commission's Notice does not contain concrete proposals and is more akin to an advance notice of proposed rulemaking or a notice of inquiry.⁶ We disagree with the SBA and Menard that the Commission should postpone acting in this proceeding – thereby postponing extending the application of the LNP and numbering administration support obligations to interconnected VoIP services – and instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities

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

² See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4917, para. 91 & Appendix A (2004) (*IP-Enabled Services Notice*).

³ See *IP-Enabled Services Notice*, 19 FCC Rcd at 4917, para. 91 & Appendix A.

⁴ See 5 U.S.C. § 604.

⁵ See SBA Comments, WC Docket No. 04-36 (filed May 28, 2004); Menard Comments, WC Docket No. 04-36 (filed May 28, 2004); Menard Reply, WC Docket No. 04-36 (filed July 15, 2004).

⁶ See SBA Comments, WC Docket No. 04-36, at 1.

and less burdensome alternatives.⁷ We believe these additional steps suggested by SBA and Menard are unnecessary because small entities already have received sufficient notice of the issues addressed in today's Report and Order,⁸ and because the Commission has considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities, and, to the extent feasible, has implemented those less burdensome alternatives.

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹²

6. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.¹³

7. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.¹⁴

8. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁵ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁶ We estimate that, of this total, 84,377 entities

⁷ See SBA Comments, WC Docket No. 04-36, at 2, 4, 6; Menard Comments, WC Docket No. 04-36; Menard Reply, WC Docket No. 04-36, at 4.

⁸ The *IP-Enabled Services Notice* specifically sought comment on whether numbering obligations are appropriate in the context of IP-enabled services and whether action relating to numbering resources is desirable to facilitate the growth of IP-enabled services, while at the same time continuing to maximize the use and life of numbering resources in the North American Numbering Plan. The Commission published a summary of that notice in the Federal Register. See *IP-Enabled Services Notice*, 19 FCC Rcd at 4911-14, paras. 73-76; *Regulatory Requirements for IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 69 FR 16193 (Mar. 29, 2004). We note that a number of small entities submitted comments in this proceeding. See *supra* Appendix A.

⁹ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

¹⁰ 5 U.S.C. § 601(6).

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

¹² 15 U.S.C. § 632.

¹³ See SBA, *Programs and Services*, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

¹⁴ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁵ 5 U.S.C. § 601(5).

¹⁶ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

were “small governmental jurisdictions.”¹⁷ Thus, we estimate that most governmental jurisdictions are small.

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

9. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and “is not dominant in its field of operation.”¹⁸ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁰ According to Commission data,²¹ 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

11. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²² According to Commission data,²³ 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant

¹⁷ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁸ 15 U.S.C. § 632.

¹⁹ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

²⁰ 13 C.F.R. § 121.201, NAICS code 517110.

²¹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, page 5-5 (Feb. 2007) (*Trends in Telephone Service*). This source uses data that are current as of October 20, 2005.

²² 13 C.F.R. § 121.201, NAICS code 517110.

²³ *Trends in Telephone Service* at Table 5.3.

Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities.

12. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁴ According to Commission data,²⁵ 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

13. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶ According to Commission data,²⁷ 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

14. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸ According to Commission data,²⁹ 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ According to Commission data,³¹ 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

16. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a

²⁴ 13 C.F.R. § 121.201, NAICS code 517310.

²⁵ *Trends in Telephone Service* at Table 5.3.

²⁶ 13 C.F.R. § 121.201, NAICS code 517310.

²⁷ *Trends in Telephone Service* at Table 5.3.

²⁸ 13 C.F.R. § 121.201, NAICS code 517110.

²⁹ *Trends in Telephone Service* at Table 5.3.

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

³¹ *Trends in Telephone Service* at Table 5.3.

business is small if it has 1,500 or fewer employees.³² According to Commission data,³³ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁴ According to Commission data,³⁵ 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 102 are estimated to have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

18. *800 and 800-Like Service Subscribers.*³⁶ These toll-free services fall within the broad economic census category of Telecommunications Resellers. This category “comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.”³⁷ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.³⁸ Census Bureau data for 2002 show that there were 1,646 firms in this category that operated for the entire year.³⁹ Of this total, 1,642 firms had employment of 999 or fewer employees, and four firms had employment of 1,000 employees or more.⁴⁰ Thus, the majority of these firms can be considered small. Additionally, it may be helpful to know the total numbers of telephone numbers assigned in these services. Commission data show that, as of June 2006, the total number of 800 numbers assigned was 7,647,941, the total number of 888 numbers assigned was 5,318,667, the total number of 877 numbers assigned was 4,431,162, and the total number of 866 numbers assigned was 6,008,976.⁴¹

b. International Service Providers

19. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad

³² 13 C.F.R. § 121.201, NAICS code 517110.

³³ *Trends in Telephone Service* at Table 5.3.

³⁴ 13 C.F.R. § 121.201, NAICS code 517310.

³⁵ *Trends in Telephone Service* at Table 5.3.

³⁶ We include all toll-free number subscribers in this category, including those for 888 numbers.

³⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517911 Telecommunications Resellers” (partial definition); <http://www.census.gov/naics/2007/def/ND517911.HTM#N517911>.

³⁸ 13 C.F.R. § 121.201, NAICS code 517911.

³⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517310 (issued Nov. 2005). Prior to 2007, the subject category was numbered 517310.

⁴⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴¹ *Trends in Telephone Service* at Tables 18.4-18.8.

census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.⁴²

20. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁴³ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.⁴⁴ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.⁴⁵ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

21. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”⁴⁶ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁴⁷ Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁴⁸ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

c. Wireless Telecommunications Service Providers

22. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”⁴⁹ and “Cellular and Other Wireless Telecommunications.”⁵⁰ Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there

⁴² 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

⁴³ U.S. Census Bureau, “2002 NAICS Definitions: 517410 Satellite Telecommunications,” available at <http://www.census.gov/epcd/naics02/def/ND517410.HTM> (visited Oct. 16, 2007).

⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

⁴⁵ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

⁴⁶ U.S. Census Bureau, “2002 NAICS Definitions: 517910 Other Telecommunications,” available at <http://www.census.gov/epcd/naics02/def/ND517910.HTM> (visited Oct. 16, 2007).

⁴⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

⁴⁸ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁴⁹ 13 C.F.R. § 121.201, NAICS code 517211 (changed from 513321 in Oct. 2002).

⁵⁰ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in Oct. 2002).

were 807 firms in this category that operated for the entire year.⁵¹ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁵² Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁵³ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁵⁴ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

24. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.”⁵⁵ Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁵⁶ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁵⁷ Thus, under this category and size standard, the majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.⁵⁸ We have estimated that 260 of these are small under the SBA small business size standard.⁵⁹

25. *Paging.* The SBA has developed a small business size standard for the broad economic census category of “Paging.”⁶⁰ Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.⁶¹ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁶² In addition, according to

⁵¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁵² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is firms with “1000 employees or more.”

⁵³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

⁵⁴ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is firms with “1000 employees or more.”

⁵⁵ 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

⁵⁷ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is firms with “1000 employees or more.”

⁵⁸ *Trends in Telephone Service* at Table 5.3.

⁵⁹ *Id.*

⁶⁰ 13 C.F.R. § 121.201, NAICS code 517211.

⁶¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁶² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

Commission data,⁶³ 365 carriers have reported that they are engaged in the provision of “Paging and Messaging Service.” Of this total, we estimate that 360 have 1,500 or fewer employees, and five have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

26. We also note that, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁶⁴ In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁶⁵ The SBA has approved this definition.⁶⁶ An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.⁶⁷ Fifty-seven companies claiming small business status won 440 licenses.⁶⁸ An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁶⁹ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁷⁰ We also note that, currently, there are approximately 74,000 Common Carrier Paging licenses.

27. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A “small business” is an entity with average gross revenues of \$40 million or less for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million or less for each of the three preceding years. The SBA has approved these small business size standards.⁷¹ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

28. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.⁷² Under that SBA small business size standard, a business is small if it has 1,500 or fewer

⁶³ *Trends in Telephone Service*, Table 5.3.

⁶⁴ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PP Docket No. 93-235, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (*Paging Second Report and Order*); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PP Docket No. 93-235, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

⁶⁵ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁶⁶ See Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (dated Dec. 2, 1998) (SBA Dec. 2, 1998 Letter).

⁶⁷ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁶⁸ *Id.*

⁶⁹ See *Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁷⁰ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003).

⁷¹ SBA Dec. 2, 1998 Letter.

⁷² 13 C.F.R. § 121.201, NAICS code 517212.

employees.⁷³ According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.⁷⁴ We have estimated that 221 of these are small under the SBA small business size standard.

29. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁷⁵ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁶ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁷⁷ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁷⁸ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

30. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.⁷⁹ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁸⁰ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size

⁷³ *Id.*

⁷⁴ *Trends in Telephone Service* at Table 5.3.

⁷⁵ *See Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824, 61 FR 33859 (July 1, 1996) (*PCS Order*); *see also* 47 C.F.R. § 24.720(b).

⁷⁶ *See PCS Order*, 11 FCC Rcd 7824.

⁷⁷ *See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5332, 59 FR 37566 (July 22, 1994).

⁷⁸ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436, 62 FR 55348 (Oct. 24, 1997).

⁷⁹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁸⁰ *See Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674*, Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); *Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787*, Public Notice, PNWL 94-27 (rel. Nov. 9, 1994).

standard in the Narrowband PCS Second Report and Order.⁸¹ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁸² A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁸³ The SBA has approved these small business size standards.⁸⁴ A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁸⁵ Three of these claimed status as a small or very small entity and won 311 licenses.

31. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.⁸⁶ For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.⁸⁷ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.⁸⁸ Thus, under this second category and size standard, the majority of firms can, again, be considered small. Assuming this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.⁸⁹

⁸¹ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (dated Dec. 2, 1998).

⁸⁵ See *Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (WTB 2001).

⁸⁶ 13 C.F.R. § 121.201, NAICS code 517212.

⁸⁷ U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued Oct. 2000).

⁸⁸ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

⁸⁹ See U.S. Census Bureau, 2002 Economic Census, Industry Series: “Information,” Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513322 (issued Nov. 2004). The preliminary data indicate that the total number of “establishments” increased from 2,959 to 9,511. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of “firms,” because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

32. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁹⁰ This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁹¹ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.⁹² Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁹³ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.⁹⁴ Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁹⁵

33. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively.⁹⁶ These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

34. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁹⁷ A “small business” as an entity that, together with its affiliates and controlling principals, has average gross

⁹⁰ *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70, paras. 291-95 (1997).

⁹¹ *Id.* at 11068, para. 291.

⁹² See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

⁹³ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

⁹⁴ See, e.g., *FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made*, Public Notice, 14 FCC Rcd 1085 (1999).

⁹⁵ *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

⁹⁶ 47 C.F.R. § 90.814(b)(1).

⁹⁷ See *Service Rules for the 746-764 MHz Bands, and Revisions to part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 65 FR 17594 (2000).

revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.⁹⁸ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁹⁹

35. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁰⁰ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).¹⁰¹ The Commission uses the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.¹⁰² There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

36. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.¹⁰³ We will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.¹⁰⁴ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

37. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees.¹⁰⁵ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, had average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling

⁹⁸ See generally *220 MHz Service Auction Closes*, Public Notice, Report No. WT 98-36 (rel. Oct. 23, 1998).

⁹⁹ *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (rel. Feb. 22, 2001).

¹⁰⁰ The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

¹⁰¹ BETRS is defined in sections 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757, 22.759.

¹⁰² 13 C.F.R. § 121.201, NAICS code 517212.

¹⁰³ The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

¹⁰⁴ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁰⁵ *Id.*

interests and affiliates, had average gross revenues for the preceding three years not to exceed \$3 million dollars.¹⁰⁶ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

38. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁰⁷ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services.¹⁰⁸ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁰⁹

39. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.¹¹⁰ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹¹¹ The SBA has approved these small business size standards.¹¹² The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

40. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),¹¹³ and the Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),¹¹⁴ to

¹⁰⁶ *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

¹⁰⁷ This service is governed by Subpart I of Part 22 of the Commission’s rules. *See* 47 C.F.R. §§ 22.1001-1037.

¹⁰⁸ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁰⁹ *Id.*

¹¹⁰ *See Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, Report and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 18600, 63 FR 6079 (Feb. 6, 1998).

¹¹¹ *Id.*

¹¹² *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 4, 1998).

¹¹³ MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules, *see* 47 C.F.R. Part 21, subpart K, and has been renamed the Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket Nos. 03-66, 03-67, 02-68, and 00-230, MM Docket No. 97-217, RM-10586, RM-9718, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (*MDS/ITFS Order*).

¹¹⁴ ITFS systems are regulated by Part 74 of the Commission’s rules; *see* 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS). *See MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

transmit video programming and provide broadband services to residential subscribers.¹¹⁵ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.¹¹⁶ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹¹⁷ As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.¹¹⁸ Other standards also apply, as described.

41. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,¹¹⁹ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.¹²⁰ This definition of a small entity in the context of MDS auctions has been approved by the SBA.¹²¹ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.¹²² MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission’s auction rules.

¹¹⁵ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565, para. 131 (2006) (*2006 Cable Competition Report*).

¹¹⁶ *Id.*

¹¹⁷ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fix Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997) (*Local Multipoint Distribution Service Order*).

¹¹⁸ 13 C.F.R. § 121.201, NAICS code 517510.

¹¹⁹ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

¹²⁰ 47 C.F.R. § 21.961(b)(1).

¹²¹ See *Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Filing Procedures in the Multipoint Distribution Service & in the Instructional Television Fixed Service*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

¹²² 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standards for “other telecommunications” (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

42. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).¹²³ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

43. In the 1998 and 1999 LMDS auctions,¹²⁴ the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.¹²⁵ Moreover, the Commission added an additional classification for a “very small business,” which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.¹²⁶ These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA.¹²⁷ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

44. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹²⁸ The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹²⁹ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹³⁰ The SBA has approved these small business size standards in the context of LMDS auctions.¹³¹ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

¹²³ In addition, the term “small entity” under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

¹²⁴ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

¹²⁵ See *Local Multipoint Distribution Service Order*, 12 FCC Rcd at 12545.

¹²⁶ *Id.*

¹²⁷ See Letter from A. Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC (January 6, 1998).

¹²⁸ See *Local Multipoint Distribution Service Order*, 12 FCC Rcd 12545.

¹²⁹ *Id.*

¹³⁰ See *id.*

¹³¹ See Letter from Aida Alvarez, Administrator, SBA, from Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

45. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹³² In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹³³ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹³⁴ We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum.

46. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.¹³⁵ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.¹³⁶ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.¹³⁷ Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹³⁸ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

47. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.¹³⁹ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and

¹³² *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330, 59 FR 24947 (May 13, 1994).

¹³³ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497, 64 FR 59656 (Nov. 3, 1999).

¹³⁴ *Id.*

¹³⁵ 13 C.F.R. § 121.201, NAICS code 517212.

¹³⁶ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Employment Size of Firms Subject to Federal Income Tax: 1997,” Table 5, NAICS code 513322 (issued Oct. 2000).

¹³⁷ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

¹³⁸ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹³⁹ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(2).

affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹⁴⁰ The SBA has approved these small business size standards.¹⁴¹ These size standards will apply to the future auction, if held.

2. Cable and OVS Operators

48. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”¹⁴² The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.¹⁴³ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.¹⁴⁴ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁴⁵ Thus, the majority of these firms can be considered small.

49. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.¹⁴⁶ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹⁴⁷ In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁴⁸ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers,

¹⁴⁰ *Amendments to Parts 1,2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000); *see also* 47 C.F.R. § 101.538(a)(1).

¹⁴¹ *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (July 28, 2000).

¹⁴² U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

¹⁴³ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁴⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁴⁵ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

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

¹⁴⁷ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

¹⁴⁸ 47 C.F.R. § 76.901(c).

and an additional 379 systems have 10,000-19,999 subscribers.¹⁴⁹ Thus, under this second size standard, most cable systems are small

50. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”¹⁵⁰ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁵¹ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹⁵² We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹⁵³ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

51. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs).¹⁵⁴ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹⁵⁵ OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having \$13.5 million or less in annual receipts.¹⁵⁶ The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises.¹⁵⁷ As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households.¹⁵⁸ Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest

¹⁴⁹ Warren Communications News, *Television & Cable Factbook 2006*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

¹⁵⁰ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

¹⁵¹ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA 01-158, 16 FCC Rcd 2225 (Cable Services Bureau, Jan. 24, 2001).

¹⁵² These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

¹⁵³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

¹⁵⁴ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2549, para. 88 (2006) (*2006 Cable Competition Report*).

¹⁵⁵ See 47 U.S.C. § 573.

¹⁵⁶ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁵⁷ See *2006 Cable Competition Report*, 20 FCC Rcd at 2549, para. 88. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

¹⁵⁸ See *id.* at 2507, para. 14.

MVPD.¹⁵⁹ RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

52. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”¹⁶⁰ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.¹⁶¹ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹⁶² Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

4. Other Internet-Related Entities

53. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”¹⁶³ The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.¹⁶⁴ According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.¹⁶⁵ Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

54. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily . . . provid[e] infrastructure for hosting or data processing services.”¹⁶⁶ The SBA has developed a small

¹⁵⁹ See *2006 Cable Competition Report*, 20 FCC Rcd at 2549, para. 89. WideOpenWest is the second largest BSP and 16th largest MVPD, with cable systems serving about 292,000 subscribers as of June, 2005. The third largest BSP is Knology, serving approximately 170,800 subscribers as of June 2005. *Id.*

¹⁶⁰ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers,” available at <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁶¹ 13 C.F.R. § 121.201, NAICS code 518111.

¹⁶² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

¹⁶³ U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals,” available at <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁶⁴ 13 C.F.R. § 121.201, NAICS code 518112.

¹⁶⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

¹⁶⁶ U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services,” available at <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

business size standard for this category; that size standard is \$23 million or less in average annual receipts.¹⁶⁷ According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.¹⁶⁸ Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

55. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”¹⁶⁹ Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.¹⁷⁰ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.¹⁷¹ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

56. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”¹⁷² The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.¹⁷³ According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.¹⁷⁴ Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

57. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users.¹⁷⁵ The SBA has developed a small business size standard of \$23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services.¹⁷⁶ For Software Publishers, Census Bureau data for 2002 indicate that

¹⁶⁷ 13 C.F.R. § 121.201, NAICS code 518210.

¹⁶⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

¹⁶⁹ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services,” available at <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

¹⁷⁰ 13 C.F.R. § 121.201, NAICS code 519190.

¹⁷¹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

¹⁷² U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting,” available at <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

¹⁷³ 13 C.F.R. § 121.201, NAICS code 516110.

¹⁷⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005).

¹⁷⁵ See U.S. Census Bureau, “2002 NAICS Definitions: 511210 Software Publishers,” available at <http://www.census.gov/epcd/naics02/def/NDEF511.HTM>.

¹⁷⁶ 13 C.F.R. § 121.201, NAICS codes 511210, 541511, and 541519.

there were 6,155 firms in the category that operated for the entire year.¹⁷⁷ Of these, 7,633 had annual receipts of under \$10 million, and an additional 403 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year.¹⁷⁸ Of these, 31,416 had annual receipts of under \$10 million, and an additional 565 firms had receipts of between \$10 million and \$24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year.¹⁷⁹ Of these, 6,187 had annual receipts of under \$10 million, and an additional 101 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

5. Equipment Manufacturers

58. SBA small business size standards are given in terms of “firms.” Census Bureau data concerning computer manufacturers, on the other hand, are given in terms of “establishments.” We note that the number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the census numbers provided below may reflect inflated numbers of businesses in the given category, including the numbers of small businesses.

59. *Electronic Computer Manufacturing.* This category “comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers.”¹⁸⁰ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees.¹⁸¹ According to Census Bureau data, there were 485 establishments in this category that operated with payroll during 2002.¹⁸² Of these, 476 had employment of under 1,000, and an additional four establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities.

60. *Computer Storage Device Manufacturing.* These establishments manufacture “computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.”¹⁸³ The SBA has developed a small business size standard for this category of

¹⁷⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 511210 (issued Nov. 2005).

¹⁷⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Professional, Scientific, and Technical Services, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 541511 (issued Nov. 2005).

¹⁷⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Professional, Scientific, and Technical Services, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 541519 (issued Nov. 2005).

¹⁸⁰ U.S. Census Bureau, 2002 NAICS Definitions, “334111 Electronic Computer Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334111.HTM#N334111>.

¹⁸¹ 13 C.F.R. § 121.201, NAICS code 334111.

¹⁸² U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Electronic Computer Manufacturing,” Table 4, NAICS code 334111 (issued Dec. 2004).

¹⁸³ U.S. Census Bureau, 2002 NAICS Definitions, “334112 Computer Storage Device Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334112.HTM#N334112>.

manufacturing; that size standard is 1,000 or fewer employees.¹⁸⁴ According to Census Bureau data, there were 170 establishments in this category that operated with payroll during 2002.¹⁸⁵ Of these, 164 had employment of under 500, and five establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities

61. *Computer Terminal Manufacturing.* “Computer terminals are input/output devices that connect with a central computer for processing.”¹⁸⁶ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees.¹⁸⁷ According to Census Bureau data, there were 71 establishments in this category that operated with payroll during 2002, and all of the establishments had employment of under 1,000.¹⁸⁸ Consequently, we estimate that all of these establishments are small entities.

62. *Other Computer Peripheral Equipment Manufacturing.* Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners.¹⁸⁹ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees.¹⁹⁰ According to Census Bureau data, there were 860 establishments in this category that operated with payroll during 2002.¹⁹¹ Of these, 851 had employment of under 1,000, and an additional five establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities.

63. *Audio and Video Equipment Manufacturing.* These establishments manufacture “electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications.”¹⁹² The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees.¹⁹³ According to Census Bureau data, there were 571 establishments in this category that operated with payroll during 2002.¹⁹⁴ Of these, 560 had employment of under 500, and ten establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

¹⁸⁴ 13 C.F.R. § 121.201, NAICS code 334112.

¹⁸⁵ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Computer Storage Device Manufacturing,” Table 4, NAICS code 334112 (issued Dec. 2004).

¹⁸⁶ U.S. Census Bureau, 2002 NAICS Definitions, “334113 Computer Terminal Manufacturing,” *available at* <http://www.census.gov/epcd/naics02/def/ND334113.HTM#N334113>.

¹⁸⁷ 13 C.F.R. § 121.201, NAICS code 334113.

¹⁸⁸ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Computer Terminal Manufacturing,” Table 4, NAICS code 334113 (issued Dec. 2004). In fact, all had employment of under 500.

¹⁸⁹ U.S. Census Bureau, 2002 NAICS Definitions, “334119 Other Computer Peripheral Equipment Manufacturing,” *available at* <http://www.census.gov/epcd/naics02/def/ND334119.HTM#N334119>.

¹⁹⁰ 13 C.F.R. § 121.201, NAICS code 334119.

¹⁹¹ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Other Computer Peripheral Equipment Manufacturing,” Table 4, NAICS code 334119 (issued Dec. 2004).

¹⁹² U.S. Census Bureau, 2002 NAICS Definitions, “334310 Audio and Video Equipment Manufacturing,” *available at* <http://www.census.gov/epcd/naics02/def/ND334310.HTM#N334310>.

¹⁹³ 13 C.F.R. § 121.201, NAICS code 334310.

¹⁹⁴ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Audio and Video Equipment Manufacturing,” Table 4, NAICS code 334310 (issued Dec. 2004).

64. *Electron Tube Manufacturing.* These establishments are “primarily engaged in manufacturing electron tubes and parts (except glass blanks).”¹⁹⁵ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees.¹⁹⁶ According to Census Bureau data, there were 102 establishments in this category that operated with payroll during 2002.¹⁹⁷ Of these, 97 had employment of under 500, and one establishment had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

65. *Bare Printed Circuit Board Manufacturing.* These establishments are “primarily engaged in manufacturing bare (i.e., rigid or flexible) printed circuit boards without mounted electronic components.”¹⁹⁸ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.¹⁹⁹ According to Census Bureau data, there were 936 establishments in this category that operated with payroll during 2002.²⁰⁰ Of these, 922 had employment of under 500, and 12 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

66. *Semiconductor and Related Device Manufacturing.* Examples of manufactured devices in this category include “integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.”²⁰¹ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.²⁰² According to Census Bureau data, there were 1,032 establishments in this category that operated with payroll during 2002.²⁰³ Of these, 950 had employment of under 500, and 42 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

67. *Electronic Capacitor Manufacturing.* These establishments manufacture “electronic fixed and variable capacitors and condensers.”²⁰⁴ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.²⁰⁵ According to Census

¹⁹⁵ U.S. Census Bureau, 2002 NAICS Definitions, “334411 Electron Tube Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334411.HTM#N334411>.

¹⁹⁶ 13 C.F.R. § 121.201, NAICS code 334411.

¹⁹⁷ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Electron Tube Manufacturing,” Table 4, NAICS code 334411 (issued Dec. 2004).

¹⁹⁸ U.S. Census Bureau, 2002 NAICS Definitions, “334412 Bare Printed Circuit Board Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334412.HTM#N334412>.

¹⁹⁹ 13 C.F.R. § 121.201, NAICS code 334412.

²⁰⁰ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Bare Printed Circuit Board Manufacturing,” Table 4, NAICS code 334412 (issued Jan. 2005).

²⁰¹ U.S. Census Bureau, 2002 NAICS Definitions, “334413 Semiconductor and Related Device Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334413.HTM#N334413>.

²⁰² 13 C.F.R. § 121.201, NAICS code 334413.

²⁰³ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Semiconductor and Related Device Manufacturing,” Table 4, NAICS code 334413 (issued Jan. 2005).

²⁰⁴ U.S. Census Bureau, 2002 NAICS Definitions, “334414 Electronic Capacitor Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334414.HTM#N334414>.

²⁰⁵ 13 C.F.R. § 121.201, NAICS code 334414.

Bureau data, there were 104 establishments in this category that operated with payroll during 2002.²⁰⁶ Of these, 101 had employment of under 500, and two establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

68. *Electronic Resistor Manufacturing.* These establishments manufacture “electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors.”²⁰⁷ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.²⁰⁸ According to Census Bureau data, there were 79 establishments in this category that operated with payroll during 2002.²⁰⁹ All of these establishments had employment of under 500. Consequently, we estimate that all of these establishments are small entities.

69. *Electronic Coil, Transformer, and Other Inductor Manufacturing.* These establishments manufacture “electronic inductors, such as coils and transformers.”²¹⁰ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.²¹¹ According to Census Bureau data, there were 365 establishments in this category that operated with payroll during 2002.²¹² All of these establishments had employment of under 500. Consequently, we estimate that all of these establishments are small entities.

70. *Electronic Connector Manufacturing.* These establishments manufacture “electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic.”²¹³ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.²¹⁴ According to Census Bureau data, there were 321 establishments in this category that operated with payroll during 2002.²¹⁵ Of these, 315 had employment of under 500, and three establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

71. *Printed Circuit Assembly (Electronic Assembly) Manufacturing.* These are establishments “primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.”²¹⁶ The SBA has developed a small business size standard for this category

²⁰⁶ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Electronic Capacitor Manufacturing,” Table 4, NAICS code 334414 (issued Jan. 2005).

²⁰⁷ U.S. Census Bureau, 2002 NAICS Definitions, “334415 Electronic Resistor Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334415.HTM#N334415>.

²⁰⁸ 13 C.F.R. § 121.201, NAICS code 334415.

²⁰⁹ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Electronic Resistor Manufacturing,” Table 4, NAICS code 334415 (issued Jan. 2005).

²¹⁰ U.S. Census Bureau, 2002 NAICS Definitions, “334416 Electronic Coil, Transformer, and Other Inductor Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334416.HTM#N334416>.

²¹¹ 13 C.F.R. § 121.201, NAICS code 334416.

²¹² U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Electronic Coil, Transformer, and Other Inductor Manufacturing,” Table 4, NAICS code 334416 (issued Jan. 2005).

²¹³ U.S. Census Bureau, 2002 NAICS Definitions, “334417 Electronic Connector Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334417.HTM#N334417>.

²¹⁴ 13 C.F.R. § 121.201, NAICS code 334417.

²¹⁵ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Electronic Connector Manufacturing,” Table 4, NAICS code 334417 (issued Jan. 2005).

²¹⁶ U.S. Census Bureau, 2002 NAICS Definitions, “334418 Printed Circuit Assembly (Electronic Assembly) Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334418.HTM#N334418>.

of manufacturing; that size standard is 500 or fewer employees.²¹⁷ According to Census Bureau data, there were 868 establishments in this category that operated with payroll during 2002.²¹⁸ Of these, 839 had employment of under 500, and 18 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

72. *Other Electronic Component Manufacturing.*²¹⁹ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.²²⁰ According to Census Bureau data, there were 1,627 establishments in this category that operated with payroll during 2002.²²¹ Of these, 1,616 had employment of under 500, and eight establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

73. *Fiber Optic Cable Manufacturing.* These establishments manufacture “insulated fiber-optic cable from purchased fiber-optic strand.”²²² The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees.²²³ According to Census Bureau data, there were 96 establishments in this category that operated with payroll during 2002.²²⁴ Of these, 95 had employment of under 1,000, and one establishment had employment of 1,000 to 2,499. Consequently, we estimate that the majority or all of these establishments are small entities.

74. *Other Communication and Energy Wire Manufacturing.* These establishments manufacture “insulated wire and cable of nonferrous metals from purchased wire.”²²⁵ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees.²²⁶ According to Census Bureau data, there were 356 establishments in this category that operated with payroll during 2002.²²⁷ Of these, 353 had employment of under 1,000, and three establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority or all of these establishments are small entities.

²¹⁷ 13 C.F.R. § 121.201, NAICS code 334418.

²¹⁸ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Printed Circuit Assembly (Electronic Assembly) Manufacturing,” Table 4, NAICS code 334418 (issued Jan. 2005).

²¹⁹ U.S. Census Bureau, 2002 NAICS Definitions, “334419 Other Electronic Component Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334419.HTM#N334419>.

²²⁰ 13 C.F.R. § 121.201, NAICS code 334419.

²²¹ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Other Electronic Component Manufacturing,” Table 4, NAICS code 334419 (issued Jan. 2005).

²²² U.S. Census Bureau, 2002 NAICS Definitions, “335921 Fiber Optic Cable Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND335921.HTM#N335921>.

²²³ 13 C.F.R. § 121.201, NAICS code 335921.

²²⁴ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Fiber Optic Cable Manufacturing,” Table 4, NAICS code 335921 (issued Dec. 2004).

²²⁵ U.S. Census Bureau, 2002 NAICS Definitions, “335929 Other Communication and Energy Wire Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND335929.HTM#N335929>.

²²⁶ 13 C.F.R. § 121.201, NAICS code 335929.

²²⁷ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Other Communication and Energy Wire Manufacturing,” Table 4, NAICS code 335929 (issued Dec. 2004).

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

75. In this Report and Order, we are requiring telecommunications carriers and providers of interconnected VoIP service to collect certain information and take other actions to comply with LNP and other numbering administration obligations. For example, we are requiring both interconnected VoIP providers and their numbering partners to facilitate a customer's porting request to or from an interconnected VoIP provider, which means that the interconnected VoIP provider has an affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the interconnected VoIP customer, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number.²²⁸ We also prohibit interconnected VoIP providers and their numbering partners from entering into agreements that would prohibit or unreasonably delay an interconnected VoIP service end user from porting between interconnected VoIP providers, or to or from a wireline carrier or a covered CMRS provider.²²⁹ Further, we expect interconnected VoIP providers to fully inform their customers about limitations on porting between providers, particularly limitations that result from the portable nature of, and use of non-geographic numbers by, certain interconnected VoIP services.²³⁰

76. We are also requiring interconnected VoIP providers to contribute to meet shared numbering administration and LNP costs. The reporting requirements for determining interconnected VoIP providers' contribution to the shared cost of numbering administration and LNP require interconnected VoIP providers to file an annual FCC Form 499-A.²³¹ We require interconnected VoIP providers to include in their annual FCC Form 499-A filing historical revenue information for the relevant year, including all information necessary to allocate revenues across the seven LNPA regions.²³² To alleviate the burdens of attributing costs among the seven LNPA regions, we allow these providers to use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA.²³³

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

77. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²³⁴

78. The *IP-Enabled Services Notice* sought comment on whether numbering obligations should be extended to IP-enabled services, and invited comment on the effect various proposals would

²²⁸ See Report and Order, *supra* para. 32.

²²⁹ See *id.*, *supra* para. 33.

²³⁰ See *id.*, *supra* note 114.

²³¹ See *id.*, *supra* para. 40.

²³² See *id.*

²³³ See *id.*, *supra* para. 38.

²³⁴ 5 U.S.C. § 603(c).

have on small entities, as well as the effect alternative rules would have on these entities.²³⁵ However, we must assess the interests of small businesses in light of the overriding public interest in ensuring that all consumers benefit from local number portability. In the Report and Order, the Commission found that allowing customers of interconnected VoIP services to receive the benefits of LNP is fundamentally important for the protection of consumers and benefits not only customers, but the interconnected VoIP providers themselves.²³⁶ Specifically, the Commission found that the ability of end users to retain their NANP telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of services they can choose to purchase. Allowing customers to respond to price and service changes without changing their telephone numbers will enhance competition, a fundamental goal of section 251 of the Act.²³⁷ In addition, the Commission found that failure to extend LNP obligations to interconnected VoIP providers and their numbering partners would thwart the effective and efficient administration of the Commission's number administration responsibilities under section 251 of the Act.²³⁸

79. The Commission concluded that because interconnected VoIP providers, including small businesses, benefit from LNP, all interconnected VoIP providers, including small businesses, should contribute to meet shared LNP costs.²³⁹ However, to alleviate costs involved in the attribution systems for all of their end-user services, when filing FCC Form 499-A, the Commission allowed interconnected VoIP providers, including small businesses, to use a proxy based on the percentage of subscribers a provider serves in a particular region for allocating their end-user revenues to the appropriate regional LNPA.²⁴⁰

80. **Report to Congress:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁴¹ A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.²⁴²

²³⁵ See *IP-Enabled Services Notice*, 19 FCC Rcd at 4912-14, paras. 74-76.

²³⁶ See Report and Order, *supra* paras. 17, 26.

²³⁷ See *id.*

²³⁸ See *id.*, *supra* para. 27.

²³⁹ See *id.*, *supra* para. 38.

²⁴⁰ See *id.*

²⁴¹ See 5 U.S.C. § 801(a)(1)(A).

²⁴² See 5 U.S.C. § 604(b).

APPENDIX D

**Final Regulatory Flexibility Analysis
(Intermodal Local Number Portability)****CC Docket No. 95-116**

1. As required by the Regulatory Flexibility Act, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was published for the *Intermodal Number Portability Order*.² The Commission sought written public comment on the IRFA. We received comments specifically directed toward the IRFA, which are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Rules

2. Section 251(b) of the Communications Act requires local exchange carriers to provide number portability, to the extent technically feasible, in accordance with the requirements prescribed by the Commission.⁴ In the *Intermodal Number Portability Order*, the Commission found that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁵ The United States Court of Appeals for the District of Columbia remanded the *Intermodal Number Portability Order* to the Commission to prepare the required FRFA on the impact of the order on carriers that qualify as small entities under the RFA.⁶ After considering information received from commenters in response to the IRFA, we conclude that wireline carriers qualifying as small entities under the RFA will be required to provide wireline-to-wireless intermodal porting where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.

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

3. In this section, we respond to comments filed in response to the IRFA.⁷ To the extent the Commission received comments raising general small business concerns during this proceeding, those comments are discussed throughout the *Intermodal Number Portability Order*.

4. As an initial matter, we reject arguments that carriers that qualify as "small entities" should not have to comply with the intermodal porting requirements until the Commission addresses issues

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding*, CC Docket No. 95-116, Public Notice, 20 FCC Rcd 8616 (2005) (*Number Portability IRFA Notice*); see also 70 Fed. Reg. 41655 (Jul. 20, 2005).

³ See 5 U.S.C. § 604.

⁴ 47 U.S.C. § 251(b).

⁵ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23706, para. 22.

⁶ See *United States Telecom Ass'n. v. FCC*, 400 F.3d at 43.

⁷ See 5 U.S.C. § 604.

pertaining to rating and routing that are pending in the intercarrier compensation proceeding.⁸ The issues that have been raised in this proceeding with respect to transporting calls to ported numbers are also before the Commission in the context of all numbers (without distinguishing between ported or non-ported numbers) in the intercarrier compensation proceeding.⁹ Further, as the Commission found in the *Intermodal Number Portability Order*, the issue of transport costs associated with calls to ported numbers is outside the scope of this proceeding and not relevant to the application of the LNP obligations under the Act.¹⁰

5. We also reject recommendations that the Commission create a partial or blanket exemption for small carriers from the wireline-to-wireless intermodal porting requirements based on the high costs of implementation.¹¹ We find that small carriers have not demonstrated such significant costs associated with implementation of LNP to warrant an exemption. Several small carriers claim that they may face a variety of costs associated with wireline-to-wireless intermodal porting, which would be excessive in light of their small customer bases.¹² However, other commenters point out that the cost information these carriers present shows a large range of cost estimates, and in fact, even when the estimates are taken at face value, they indicate that the cost of wireline-to-wireless intermodal LNP does not impose a

⁸ See, e.g., NTCA/OPASTCO Comments, CC Docket No. 95-116, at 18-19 (filed Aug. 19, 2005); NTCA/OPASTCO Reply, CC Docket No. 95-116, at 5 (filed Sept. 7, 2005); Office of Advocacy, SBA Comments, CC Docket No. 95-116, at 8 (filed Aug. 15, 2005); Missouri Small Telephone Company Group, CC Docket No. 95-116, at 4-7 (filed Aug. 19, 2005); Nebraska Rural Independent Companies Comments, CC Docket No. 95-116, at 6-7 (filed Aug. 19, 2005).

⁹ Rating and routing issues are currently before the Commission in several proceedings. See, e.g., *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation Notice of Proposed Rulemaking*); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (*Intercarrier Compensation Further Notice*); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, 21 FCC Rcd 14764 (WCB 2007); *Pleading Cycle Extended for Comment on Amendments to the Missoula Plan Intercarrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism*, CC Docket No. 01-92, Public Notice, 22 FCC Rcd 5098 (2007); Sprint Petition for Declaratory Ruling, CC Docket No. 01-92, at 1 (filed May 9, 2002); see also *Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket 01-92, Public Notice, 17 FCC Rcd 19046 (2002); ASAP Paging, Inc. Petition for Preemption of Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers, WC Docket No. 04-6 (filed Dec. 22, 2003); *Pleading Cycle Establishing for Petition of ASAP Paging, Inc. for Preemption of the Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers*, WC Docket No. 04-6, Public Notice, 19 FCC Rcd 936 (2004).

¹⁰ See *Intermodal Number Portability Order*, 18 FCC Rcd at 23713, para. 40. We emphasize that our findings in this FRFA are limited to the context of the wireline-to-wireless intermodal LNP requirements that are applicable to wireline carriers qualifying as small entities under the RFA. We make no determination regarding issues pending in the intercarrier compensation proceeding and nothing in this FRFA should be viewed as prejudging the outcome of that proceeding. Our decision here does not prejudice the ability of state commissions to consider rating and routing issues or transport costs in their review of petitions filed pursuant to section 251(f)(2).

¹¹ See, e.g., Missouri Small Telephone Company Group Comments, CC Docket No. 95-116, at 13 (filed Aug. 19, 2005); Nebraska Rural Independent Companies Comments, CC Docket No. 95-116, at 8 (filed Aug. 19, 2005); Rural Iowa Independent Telephone Association Comments, CC Docket No. 95-116, at 5 (filed Aug. 19, 2005); South Dakota Telecommunications Association, CC Docket No. 95-116, at 6 (filed Aug. 19, 2005).

¹² See, e.g., Missouri Small Telephone Company Group Comments, CC Docket No. 95-116, at 2-6 (filed Aug. 19, 2005); Montana Small Rural Independents Comments, CC Docket No. 95-116, at 10 (filed Aug. 19, 2005); Nebraska Rural Independent Companies Comments, CC Docket No. 95-116, at 4 (filed Aug. 19, 2005); USTA Comments, CC Docket No. 95-116, at 8-10 (filed Aug. 19, 2005); USTA Reply, CC Docket No. 95-116, at 8 (filed Sept. 6, 2005).

significant economic burden on small entities.¹³ In addition, we are not persuaded based on this record that the costs of implementing LNP are as large as the commenters suggest, given the scant support they provide for their estimates and their failure to demonstrate that all the estimated costs are of the sort that the Commission would allow to be attributed to the LNP end-user charge. For example, some commenters cite their estimated costs associated with transporting calls to ported numbers.¹⁴ However, as discussed above, the Commission previously declined to consider these as LNP-related costs, rather than costs of interconnection more generally, and the commenters here do not demonstrate that the Commission should reverse that conclusion.¹⁵

6. Further, in response to small carrier concerns about LNP implementation costs, we note that wireline carriers generally only are required to provide LNP upon receipt of a specific request for the provision of LNP by another carrier.¹⁶ Thus, many of the small carriers may not be required to implement LNP immediately because there is no request to do so. Indeed, as the Commission found in the *First Number Portability Order on Reconsideration*, these rights effectively constitute steps that minimize the economic impact of LNP on small entities.¹⁷ Further, carriers have the ability to petition the Commission for a waiver of their obligation to port numbers to wireless carriers if they can provide substantial, credible evidence that there are special circumstances that warrant a departure from existing rules.¹⁸ In addition, under section 251(f)(2), a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition the appropriate state commission for suspension or

¹³ See, e.g., CTIA Comments, CC Docket No. 95-116, at 7 (filed Aug. 19, 2005); Verizon Wireless Comments, CC Docket No. 95-116, at 2 (filed Aug. 19, 2005). CTIA, for example, citing the Missouri Small Telephone Company Group's implementation cost estimate of \$1,000,000 for all of its twenty-five member companies, notes that, when divided by the 88,500 lines the group's members serve and divided by the five years during which carriers are permitted to recover these non-recurring charges, the charge amounts to \$0.19 per line, per month. See CTIA Reply, CC Docket No. 95-116, at 13 (filed Sept. 6, 2005). Verizon Wireless notes that, in Iowa, a rural carrier can implement LNP for a monthly per customer cost of \$0.18, in Nebraska, a carrier can do so for \$0.67, and in Missouri, a carrier can complete the implementation for \$0.11 per month. See Verizon Wireless Reply, CC Docket No. 95-116, at 2 (filed Sept. 6, 2005). Further, such costs may be even less for those carriers who have already implemented wireline-to-wireline porting and thus have the infrastructure for porting already in place.

¹⁴ The South Dakota Telecommunications Association, for example, indicated that its member companies estimated transport costs to range from \$0.20 to \$30 per line, per month. See South Dakota Telecommunications Association Comments, CC Docket No. 95-116, at 3-4 (filed Aug. 29, 2005). One member company of the Missouri Small Telephone Company Group, located in a remote area, estimated its monthly transport cost to be \$1500, or 85% of its monthly recurring LNP costs. See Missouri Small Telephone Company Group Comments, CC Docket No. 95-116, at 3 (filed Aug. 19, 2005).

¹⁵ While the Commission sought comment on this category of costs in the associated IRFA, it did so because the issue was raised by the SBA. See *Number Portability IRFA Notice*, 20 FCC Rcd at 8622, para. 10 & n.20. The Public Notice did not reverse Commission precedent, nor does the record here persuade us to do so.

¹⁶ See *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 99-200, 96-98, 95-116, Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking, 18 FCC Rcd 12472, 12475, para. 8 (2003) (*NRO and LNP Fourth Report and Order*). In addition, carriers operating outside of the 100 largest MSAs have six months after receiving a request from another carrier in which to provide LNP. *Id.* at 12475, n.17; see 47 C.F.R. § 52.23(c). The Commission also delegated authority to the state to require carriers within the 100 largest MSAs to implement LNP even in the absence of a request, if doing so "would serve the public interest, because there is actual, meaningful consumer demand, as evidenced by consumer requests" for LNP in such areas. *NRO and LNP Fourth Report and Order*, 18 FCC Rcd at 12476-77, paras. 11-12.

¹⁷ See *First Number Portability Order on Reconsideration*, 12 FCC Rcd at 7343-44, App. D, paras. 29-30.

¹⁸ See 47 C.F.R. § 1.3.

modification of the requirements of section 251(b).¹⁹ We find these existing safeguards further address commenters' concerns regarding the costs on small entities to implement LNP.

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

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted.²⁰ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²¹ In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.²² 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) satisfies any additional criteria established by the Small Business Administration (SBA).²³

8. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for wireline firms within the broad economic census category, "Wired Telecommunications Carriers."²⁴ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year.²⁵ Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more.²⁶ Thus, under this category and associated small business size standard, the majority of firms can be considered small.

9. *Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers (LECs) in this RFA analysis. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category of Wired Telecommunications Carriers. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."²⁷ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.²⁸ We

¹⁹ 47 U.S.C. § 251(f)(2).

²⁰ See 5 U.S.C. § 603(b)(3).

²¹ 5 U.S.C. § 601(6).

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

²³ 15 U.S.C. § 632.

²⁴ 13 C.F.R. § 121.201, NAICS code 517110.

²⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517110 (issued Nov. 2005).

²⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

²⁷ 5 U.S.C. § 601(3).

²⁸ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates

(continued...)

have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts. According to Commission data,²⁹ 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities.

10. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ According to Commission data,³¹ 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

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

11. There are no significant reporting, recordkeeping or other compliance requirements imposed on small entities by the *Intermodal Number Portability Order*.

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

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³²

13. The Commission invited comment on the intermodal porting rules with respect to their application to small entities in light of the RFA requirements. In accordance with the requirements of the

(...continued from previous page)

into its own definition of "small business." See 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²⁹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, Page 5-5 (Feb. 2007) (*Trends in Telephone Service*). This source uses data that are current as of October 20, 2005.

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

³¹ *Trends in Telephone Service* at Table 5.3.

³² See 5 U.S.C. § 603.

RFA, we have considered the potential economic impact of the intermodal porting rules on small entities and conclude that wireline carriers qualifying as small entities under the RFA will be required to provide wireline-to-wireless intermodal porting where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.³³ We find that this approach best balances the impact of the costs that may be associated with the wireline-to-wireless intermodal porting rules for small carriers and the public interest benefits of those requirements.

14. Specifically, in the *Intermodal Number Portability Order*, the Commission considered limiting the scope of intermodal porting based on the small carrier concern that requiring porting to a wireless carrier that does not have a physical point of interconnection or numbering resources in the rate center associated with the ported number would give wireless carriers an unfair competitive advantage.³⁴ The Commission found, however, that these considerations did not justify denying wireline consumers the benefit of being able to port their numbers to wireless carriers.³⁵ In addition, the order noted that each type of service offers its own advantages and disadvantage and that consumers would consider these attributes in determining whether or not to port their numbers.³⁶ The order also considered the concern expressed by small carriers that requiring porting beyond wireline rate center boundaries would lead to increased transport costs.³⁷ The Commission concluded that such concerns were outside the scope of the number portability proceeding and noted that the rating and routing issues raised by the rural wireline carriers were also implicated in the context of non-ported numbers and were before the Commission in other proceedings.³⁸

15. Further, if there is a particular case where a carrier faces extraordinary costs, other regulatory avenues for relief are available.³⁹ Specifically, a carrier may petition the Commission for additional time or waiver of the intermodal porting requirements if it can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.⁴⁰ In addition, under section 251(f)(2), a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition the appropriate state commission for suspension or modification of the requirements of section 251(b).⁴¹ Although some commenters have complained about the time and expense associated with the section 251(f)(2) mechanism,⁴² several others have indicated that the

³³ See Report and Order, *supra*, para. 51; see also *Intermodal Number Portability Order*, 18 FCC Rcd at 23698, para. 1.

³⁴ See *id.* at 23703, para. 16.

³⁵ See *id.* at 23708, para. 27.

³⁶ See *id.*

³⁷ See *id.* at 23704, para. 16.

³⁸ See *id.* at 23713, paras. 39-40.

³⁹ See, e.g., CTIA Reply, CC Docket No. 95-116, at 6-7 (filed Sept. 6, 2005); Dobson Cellular Reply, CC Docket No. 95-116, at 8-9 (filed Sept. 6, 2005); Sprint/Nextel Reply, CC Docket No. 95-116, at 16-18 (filed Sept. 6, 2005); T-Mobile Reply, CC Docket No. 95-116, at 8 (filed Sept. 6, 2005); Verizon Wireless Reply, CC Docket No. 95-116, at 2-3 (filed Sept. 6, 2005).

⁴⁰ 47 C.F.R. § 1.3.

⁴¹ 47 U.S.C. § 251(f)(2).

⁴² See, e.g., Nebraska Rural Independent Companies Comments, CC Docket No. 95-116, at 7 (filed Aug. 19, 2005); NTCA/OPASTCO Comments, CC Docket No. 95-116, at 16 (filed Aug. 19, 2005); South Dakota Telecommunications Association Comments, CC Docket No. 95-116, at 7-8 (filed Aug. 19, 2005).

251(f)(2) mechanism has been an effective method of addressing the potential burdens on small carriers.⁴³ Further, in response to small carriers' concerns about LNP implementation costs, we note that wireline carriers generally only are required to provide LNP upon receipt of a specific request for the provision of LNP by another carrier.⁴⁴ Thus, many of the small carriers may not be required to implement LNP immediately because there is no request to do so. Indeed, as the Commission found in the *First Number Portability Order on Reconsideration*, these rights effectively constitute steps that minimize the economic impact of LNP on small entities.⁴⁵ We find these existing safeguards further address commenters' concerns regarding the costs on small entities to implement LNP.

16. While we recognize that wireline carriers will still incur implementation and recurrent costs, we conclude that the benefits to the public of requiring wireline-to-wireless intermodal LNP outweigh the economic burden imposed on these carriers.⁴⁶ Creating a partial or blanket exemption from the wireline-to-wireless intermodal porting requirements for small entities would harm consumers in small and rural areas across the country by preventing them from being able to port on a permanent basis. It might also discourage further growth of competition between wireless and wireline carriers in smaller markets across the country. We continue to believe that the intermodal LNP requirements are important for promoting competition between the wireless and wireline industries and generating innovative service offerings and lower prices for consumers. Wireless number porting activity since the advent of porting has been significant and evidence shows that the implementation of LNP has, in fact, yielded important benefits for consumers, such as improved customer retention efforts by carriers.⁴⁷ By reinstating, immediately, the wireline-to-wireless intermodal porting requirement, this approach ensures that more consumers in small and rural communities will be able to port and experience the competitive benefits of LNP.

F. Report to Congress

17. The Commission will send a copy of this FRFA in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁴⁸ A copy of the FRFA (or a summary thereof) will also be published in the Federal Register.⁴⁹

⁴³ See, e.g., Iowa Utility Board Comments, CC Docket No. 95-116, at 6 (filed Aug. 19, 2005); Montana Independent Telecommunications Systems Comments, CC Docket No. 95-116, at 12-13 (filed Aug. 19, 2005) (commenting that the section 251(f) state proceeding was a highly effective way of addressing these LNP issues before a decision-maker who was familiar with the particular nature of the small rural LECs).

⁴⁴ See *NRO and LNP Fourth Report and Order*, 18 FCC Rcd at 12475, para. 8. In addition, carriers operating outside of the 100 largest MSAs have six months after receiving a request from another carrier in which to provide LNP. See *id.* at 12475, n.17; see also 47 C.F.R. § 52.23(c).

⁴⁵ See *First Number Portability Order on Reconsideration*, 12 FCC Rcd at 7343-44, App. D, paras. 29-30.

⁴⁶ We thus reject commenters' arguments that demand for intermodal porting among rural customers is low and does not justify imposing these costs on small carriers. See, e.g., Montana Small Rural Independents Comments, CC Docket No. 95-116, at 6 (filed Aug. 19, 2005); Rural Iowa Independent Telephone Association Comments, CC Docket No. 95-116, at 2 (filed Aug. 19, 2005).

⁴⁷ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 11006, para. 148 (2006).

⁴⁸ See 5 U.S.C. § 801(a)(1)(A).

⁴⁹ See 5 U.S.C. § 604(b).

APPENDIX E

**Initial Regulatory Flexibility Analysis
WC Docket Nos. 07-243 and 07-244**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the Notice and the IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. In this Notice, we consider whether there are additional numbering requirements the Commission should adopt to benefit customers of telecommunications and interconnected VoIP services. Specifically, we seek comment on whether the Commission should extend other LNP requirements and numbering-related rules, including compliance with N11 code assignments, to interconnected VoIP providers.⁴ We also seek comment on whether the Commission should adopt rules specifying the length of the porting intervals or other changes to the LNP validation process, or other details of the porting process.⁵ Among other things, we tentatively conclude that the Commission should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically, to a 48-hour porting interval.⁶ We seek comment on our tentative conclusions and issues related to our tentative conclusions. For each of these issues, we also seek comment on the burdens, including those placed on small carriers, associated with corresponding Commission rules related to each issue.⁷

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this Notice is contained in sections 1, 4(i), 4(j), 251 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 251, 303(r).

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.⁸ The RFA generally defines the

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See Notice, *supra* para. 53.

⁵ See *id.*, *supra* paras. 54-66.

⁶ See *id.*, *supra* paras. 59-65.

⁷ See *id.*, *supra* paras. 54-66.

⁸ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹¹

5. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.¹²

6. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.¹³

7. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁵ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁶ Thus, we estimate that most governmental jurisdictions are small.

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

8. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹⁷ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁸ We have therefore included small incumbent LECs in this

⁹ 5 U.S.C. § 601(6).

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

¹¹ 15 U.S.C. § 632.

¹² See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at 40 (July 2002).

¹³ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁴ 5 U.S.C. § 601(5).

¹⁵ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, at 272, Table 415.

¹⁶ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, at 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁷ 15 U.S.C. § 632.

¹⁸ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA).

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RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁹ According to Commission data,²⁰ 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

10. *Competitive LECs, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²¹ According to Commission data,²² 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are “Shared-Tenant Service Providers,” and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are “Other Local Service Providers.” Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, “Shared-Tenant Service Providers,” and “Other Local Service Providers” are small entities.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²³ According to Commission data,²⁴ 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ According to Commission data,²⁶ 881 carriers have reported that they are engaged in the

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SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. *See* 13 C.F.R. § 121.102(b).

¹⁹ 13 C.F.R. § 121.201, NAICS code 517110.

²⁰ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, page 5-5 (Feb. 2007) (*Trends in Telephone Service*). This source uses data that are current as of October 20, 2005.

²¹ 13 C.F.R. § 121.201, NAICS code 517110.

²² *Trends in Telephone Service* at Table 5.3.

²³ 13 C.F.R. § 121.201, NAICS code 517310.

²⁴ *Trends in Telephone Service* at Table 5.3.

²⁵ 13 C.F.R. § 121.201, NAICS code 517310.

provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. *Payphone Service Providers (PSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁷ According to Commission data,²⁸ 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁹ According to Commission data,³⁰ 330 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

15. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³¹ According to Commission data,³² 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

16. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³³ According to Commission data,³⁴ 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 102 are estimated to have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

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²⁶ *Trends in Telephone Service* at Table 5.3.

²⁷ 13 C.F.R. § 121.201, NAICS code 517110.

²⁸ *Trends in Telephone Service* at Table 5.3.

²⁹ 13 C.F.R. § 121.201, NAICS code 517110.

³⁰ *Trends in Telephone Service* at Table 5.3.

³¹ 13 C.F.R. § 121.201, NAICS code 517110.

³² *Trends in Telephone Service* at Table 5.3.

³³ 13 C.F.R. § 121.201, NAICS code 517310.

³⁴ *Trends in Telephone Service* at Table 5.3.

17. *800 and 800-Like Service Subscribers.*³⁵ These toll-free services fall within the broad economic census category of Telecommunications Resellers. This category “comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.”³⁶ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.³⁷ Census Bureau data for 2002 show that there were 1,646 firms in this category that operated for the entire year.³⁸ Of this total, 1,642 firms had employment of 999 or fewer employees, and four firms had employment of 1,000 employees or more.³⁹ Thus, the majority of these firms can be considered small. Additionally, it may be helpful to know the total numbers of telephone numbers assigned in these services. Commission data show that, as of June 2006, the total number of 800 numbers assigned was 7,647,941, the total number of 888 numbers assigned was 5,318,667, the total number of 877 numbers assigned was 4,431,162, and the total number of 866 numbers assigned was 6,008,976.⁴⁰

b. International Service Providers

18. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of “Satellite Telecommunications” and “Other Telecommunications.” Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.⁴¹

19. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁴² For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.⁴³ Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.⁴⁴ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

³⁵ We include all toll-free number subscribers in this category, including those for 888 numbers.

³⁶ U.S. Census Bureau, 2007 NAICS Definitions, “517911 Telecommunications Resellers” (partial definition); <http://www.census.gov/naics/2007/def/ND517911.HTM#N517911>.

³⁷ 13 C.F.R. § 121.201, NAICS code 517911.

³⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517310 (issued Nov. 2005). Prior to 2007, the subject category was numbered 517310.

³⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴⁰ *Trends in Telephone Service* at Tables 18.4-18.8.

⁴¹ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910.

⁴² U.S. Census Bureau, “2002 NAICS Definitions: 517410 Satellite Telecommunications,” *available at* <http://www.census.gov/epcd/naics02/def/ND517410.HTM> (visited Oct. 16, 2007).

⁴³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

⁴⁴ *Id.* An additional 38 firms had annual receipts of \$25 million or more.

20. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”⁴⁵ For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.⁴⁶ Of this total, 259 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.⁴⁷ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

c. Wireless Telecommunications Service Providers

21. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

22. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”⁴⁸ and “Cellular and Other Wireless Telecommunications.”⁴⁹ Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.⁵⁰ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁵¹ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁵² Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁵³ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

⁴⁵ U.S. Census Bureau, “2002 NAICS Definitions: 517910 Other Telecommunications,” available at <http://www.census.gov/epcd/naics02/def/ND517910.HTM> (visited Oct. 16, 2007).

⁴⁶ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

⁴⁷ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

⁴⁸ 13 C.F.R. § 121.201, NAICS code 517211 (changed from 513321 in Oct. 2002).

⁴⁹ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in Oct. 2002).

⁵⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁵¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is firms with “1000 employees or more.”

⁵² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

⁵³ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is firms with “1000 employees or more.”

23. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.”⁵⁴ Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁵⁵ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁵⁶ Thus, under this category and size standard, the majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.⁵⁷ We have estimated that 260 of these are small under the SBA small business size standard.⁵⁸

24. *Paging.* The SBA has developed a small business size standard for the broad economic census category of “Paging.”⁵⁹ Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.⁶⁰ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁶¹ In addition, according to Commission data,⁶² 365 carriers have reported that they are engaged in the provision of “Paging and Messaging Service.” Of this total, we estimate that 360 have 1,500 or fewer employees, and five have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

25. We also note that, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁶³ In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁶⁴ The SBA has approved this definition.⁶⁵ An auction of Metropolitan Economic

⁵⁴ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in Oct. 2002).

⁵⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

⁵⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is firms with “1000 employees or more.”

⁵⁷ *Trends in Telephone Service* at Table 5.3.

⁵⁸ *Id.*

⁵⁹ 13 C.F.R. § 121.201, NAICS code 517211.

⁶⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁶¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁶² *Trends in Telephone Service*, Table 5.3.

⁶³ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PP Docket No. 93-235, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (*Paging Second Report and Order*); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PP Docket No. 93-235, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

⁶⁴ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.⁶⁶ Fifty-seven companies claiming small business status won 440 licenses.⁶⁷ An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁶⁸ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁶⁹ We also note that, currently, there are approximately 74,000 Common Carrier Paging licenses.

26. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.⁷⁰ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁷¹ According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.⁷² We have estimated that 221 of these are small under the SBA small business size standard.

27. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁷³ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁷⁴ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.⁷⁵ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won

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⁶⁵ See Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (dated Dec. 2, 1998) (SBA Dec. 2, 1998 Letter).

⁶⁶ See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁶⁷ *Id.*

⁶⁸ See *Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2002).

⁶⁹ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003).

⁷⁰ 13 C.F.R. § 121.201, NAICS code 517212.

⁷¹ *Id.*

⁷² *Trends in Telephone Service* at Table 5.3.

⁷³ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824, 61 FR 33859 (July 1, 1996) (*PCS Order*); see also 47 C.F.R. § 24.720(b).

⁷⁴ See *PCS Order*, 11 FCC Rcd 7824.

⁷⁵ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5332, 59 FR 37566 (July 22, 1994).

approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁷⁶ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

28. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less.⁷⁷ Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.⁷⁸ To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.⁷⁹ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million.⁸⁰ A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.⁸¹ The SBA has approved these small business size standards.⁸² A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.⁸³ Three of these claimed status as a small or very small entity and won 311 licenses.

29. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.⁸⁴ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).⁸⁵ The Commission

⁷⁶ FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997); *see also* *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436, 62 FR 55348 (Oct. 24, 1997).

⁷⁷ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

⁷⁸ *See Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total \$617,006,674*, Public Notice, PNWL 94-004 (rel. Aug. 2, 1994); *Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total \$490,901,787*, Public Notice, PNWL 94-27 (rel. Nov. 9, 1994).

⁷⁹ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (dated Dec. 2, 1998).

⁸³ *See Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (WTB 2001).

⁸⁴ *See* 47 C.F.R. § 22.99 (defining Rural Radiotelephone Service).

⁸⁵ *See* 47 C.F.R. §§ 22.757, 22.759 (defining BETRS).

uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.⁸⁶ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

30. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.⁸⁷ We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.⁸⁸ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

31. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.⁸⁹ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.⁹⁰ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁹¹

2. Cable and OVS Operators

32. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."⁹² The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.⁹³ According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.⁹⁴ Of this total, 1,087 firms had annual receipts of under \$10

⁸⁶ 13 C.F.R. § 121.201, NAICS code 517212.

⁸⁷ See 47 C.F.R. § 22.99 (defining Air-Ground Radiotelephone Service).

⁸⁸ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in Oct. 2002).

⁸⁹ This service is governed by Subpart I of Part 22 of the Commission's rules. See 47 C.F.R. §§ 22.1001-22.1037.

⁹⁰ 13 C.F.R. § 121.201, NAICS code 517212.

⁹¹ *Id.*

⁹² U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁹³ 13 C.F.R. § 121.201, NAICS code 517110.

⁹⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

million, and 43 firms had receipts of \$10 million or more but less than \$25 million.⁹⁵ Thus, the majority of these firms can be considered small.

33. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.⁹⁶ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.⁹⁷ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁹⁸ Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.⁹⁹ Thus, under this second size standard, most cable systems are small

34. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁰⁰ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁰¹ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹⁰² We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹⁰³ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

35. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by

⁹⁵ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

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

⁹⁷ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

⁹⁸ 47 C.F.R. § 76.901(c).

⁹⁹ Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

¹⁰⁰ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

¹⁰¹ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA 01-158, 16 FCC Rcd 2225 (Cable Services Bureau, Jan. 24, 2001).

¹⁰² These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

¹⁰³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

local exchange carriers (LECs).¹⁰⁴ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹⁰⁵ OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having \$13.5 million or less in annual receipts.¹⁰⁶ The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises.¹⁰⁷ As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households.¹⁰⁸ Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD.¹⁰⁹ RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

36. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”¹¹⁰ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.¹¹¹ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹¹² Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

37. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”¹¹³ The SBA has developed a small business size standard for this category; that size standard is \$6.5 million

¹⁰⁴ 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2549, para. 88 (2006) (*2006 Cable Competition Report*).

¹⁰⁵ See 47 U.S.C. § 573.

¹⁰⁶ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁰⁷ See *2006 Cable Competition Report*, 20 FCC Rcd at 2549, para. 88. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

¹⁰⁸ See *id.* at 2507, para. 14.

¹⁰⁹ See *2006 Cable Competition Report*, 20 FCC Rcd at 2549, para. 89. WideOpenWest is the second largest BSP and 16th largest MVPD, with cable systems serving about 292,000 subscribers as of June, 2005. The third largest BSP is Knology, serving approximately 170,800 subscribers as of June 2005. *Id.*

¹¹⁰ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers,” available at <http://www.census.gov/epcd/naics02/def/ND518111.HTM> (visited Oct. 16, 2007).

¹¹¹ 13 C.F.R. § 121.201, NAICS code 518111 (changed from 514191, “On-Line Information Services,” in Oct. 2002).

¹¹² U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 4, NAICS code 518111 (issued Nov. 2005).

¹¹³ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services,” available at <http://www.census.gov/epcd/naics02/def/ND519190.HTM> (visited Oct. 16, 2007).

or less in average annual receipts.¹¹⁴ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.¹¹⁵ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

4. Equipment Manufacturers

38. SBA small business size standards are given in terms of “firms.” Census Bureau data concerning computer manufacturers, on the other hand, are given in terms of “establishments.” We note that the number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the census numbers provided below may reflect inflated numbers of businesses in the given category, including the numbers of small businesses.

39. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”¹¹⁶ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹¹⁷ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.¹¹⁸ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.¹¹⁹ Thus, under this size standard, the majority of firms can be considered small.

40. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger

¹¹⁴ 13 C.F.R. § 121.201, NAICS code 519190.

¹¹⁵ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 514199 (issued Oct. 2000). This category was created for the 2002 Economic Census by taking a portion of the superseded 1997 category, “All Other Information Services,” NAICS code 514199. The data cited in the text above are derived from the superseded category.

¹¹⁶ U.S. Census Bureau, 2002 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹¹⁷ 13 C.F.R. § 121.201, NAICS code 334220.

¹¹⁸ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

¹¹⁹ *Id.* An additional 18 establishments had employment of 1,000 or more.

system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.”¹²⁰ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.¹²¹ According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.¹²² Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499.¹²³ Thus, under this size standard, the majority of firms can be considered small.

41. *Semiconductor and Related Device Manufacturing.* Examples of manufactured devices in this category include “integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.”¹²⁴ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees.¹²⁵ According to Census Bureau data, there were 1,032 establishments in this category that operated with payroll during 2002.¹²⁶ Of these, 950 had employment of under 500, and 42 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

42. *Computer Storage Device Manufacturing.* These establishments manufacture “computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.”¹²⁷ The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees.¹²⁸ According to Census Bureau data, there were 170 establishments in this category that operated with payroll during 2002.¹²⁹ Of these, 164 had employment of under 500, and five establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

¹²⁰ U.S. Census Bureau, 2002 NAICS Definitions, “334210 Telephone Apparatus Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹²¹ 13 C.F.R. § 121.201, NAICS code 334210.

¹²² U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

¹²³ *Id.* An additional 4 establishments had employment of 2,500 or more.

¹²⁴ U.S. Census Bureau, 2002 NAICS Definitions, “334413 Semiconductor and Related Device Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334413.HTM#N334413>.

¹²⁵ 13 C.F.R. § 121.201, NAICS code 334413.

¹²⁶ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Semiconductor and Related Device Manufacturing,” Table 4, NAICS code 334413 (issued Jan. 2005).

¹²⁷ U.S. Census Bureau, “2002 NAICS Definitions: 334112 Computer Storage Device Manufacturing,” available at <http://www.census.gov/epcd/naics02/def/ND334112.HTM> (visited Oct. 16, 2007).

¹²⁸ 13 C.F.R. § 121.201, NAICS code 334112.

¹²⁹ U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Computer Storage Device Manufacturing,” Table 4, NAICS code 334112 (issued Dec. 2004).

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

43. Should the Commission decide to adopt any further numbering requirements to benefit customers of telecommunications and interconnected VoIP service, the associated rules potentially could modify the reporting and recordkeeping requirements of certain telecommunications providers and interconnected VoIP service providers. For example, the Commission seeks comment on whether it should require interconnected VoIP providers to comply with N11 code assignments.¹³⁰ Additionally, the Commission seeks comment on whether the Commission should adopt a requirement that carriers identify all errors possible in a given LSR and describe the basis for rejection when rejecting a port request.¹³¹ The Commission also tentatively concludes that it should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically to a 48-hour porting interval, and seeks comment on whether the Commission should establish time limits on the porting process for all types of simple port requests or just certain types of ports.¹³² Further, the Commission seeks comment on whether there are any technical impediments or advances that affect the overall length of the porting interval such that it should adopt different porting intervals for particular types of simple ports.¹³³ These proposals may impose additional reporting and recordkeeping requirements on entities. Also, we seek comment on whether any of these proposals place burdens on small entities, and whether alternatives might lessen such burdens while still achieving the goals of this proceeding.¹³⁴ Entities, especially small businesses, are encouraged to quantify the costs and benefits or any reporting requirement that may be established in this proceeding.

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

44. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹³⁵

45. The Commission's primary objective is to ensure that that consumers benefit from LNP. We seek comment on the burdens, including those placed on small carriers, associated with related Commission rules and whether the Commission should adopt different requirements for small businesses. Specifically, we seek comment on the benefits and burdens, including the burdens on small entities, of requiring interconnected VoIP providers to comply with N11 code assignments and other numbering requirements.¹³⁶ We also seek comment on the benefits and burdens, including the burdens on small entities, of the specific requirements on the validation process proposed in the Notice and any other such

¹³⁰ See Notice, *supra* para. 53.

¹³¹ See *id.*, *supra* para. 57.

¹³² See *id.*, *supra* para. 59.

¹³³ See *id.*, *supra* para. 63.

¹³⁴ See *id.*, *supra* paras. 53, 58, 64.

¹³⁵ 5 U.S.C. § 603(c).

¹³⁶ See Notice, *supra* para. 53.

requirements.¹³⁷ Further, the Commission seeks comment on the benefits and burdens, including the burdens on small entities, of adopting rules regarding porting intervals for all types of simple port requests.¹³⁸

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

46. None.

¹³⁷ *See id., supra* para. 58.

¹³⁸ *See id., supra* para. 64.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Numbering Resource Optimization, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200

I am pleased the Commission today adopts this item addressing local number portability because it provides important consumer benefits by promoting competition for consumer telephone services. I have consistently supported local number portability because it allows consumers to choose a cheaper or more innovative service. I have also consistently maintained that establishing a level playing field promotes competition. As interconnected VoIP providers have increasingly entered the market, it is important that consumers be able to transfer their number to and from these providers just like transfers between carriers. I also support the actions to streamline the process and time required to switch from wireline to wireless service in order to provide consumers the ability to change providers without undue burden or delay.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *IP-Enabled Services*, WC Docket No. 04-36; *Telephone Number Portability*, CC Docket No. 95-116; *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Final *Regulatory Flexibility Analysis*, *Numbering Resource Optimization*, CC Docket No. 99-200; *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243; *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking

In the 1996 Telecommunications Act, Congress imposed a number portability obligation on providers so consumers could retain their phone numbers when switching carriers. This was both consumer-friendly and competition-friendly. Local number portability is a real success story. Today's item works to ensure that consumers continue to benefit from local number portability when it comes to interconnected VoIP services. I am pleased to support it.

Today's Order also streamlines the port validation process by requiring providers to validate a consumer's porting request based upon no more than four specified criteria. By providing clarity to carriers in this regard, consumers will benefit from more timely and efficient processing of their requests. I want to thank Chairman Martin and my colleagues for supporting my proposal to address this issue here rather than making consumers wait any longer for its resolution. I also support the few remaining questions the Commission poses regarding the obligations of interconnected VoIP providers and the timing interval expected for intermodal porting requests. I am pleased that the Order includes my suggestion that when determining the appropriate porting interval we should take into account the evolving nature of technologies and business practices with the goal of reducing porting times to the shortest reasonable time-period. I am optimistic that we will be able to complete this proceeding rapidly if all interested parties work together.

A lesson to be learned from the success of local number portability is that the Commission should be seeking out additional ways to break down barriers that impede consumers from taking advantage of competition, such as wireless and broadband early termination fees and the locking of phone features. The more we do on such initiatives, the better it will be for consumers and competition. That's a win-win in my book.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
Approving in part, concurring in part**

Re: IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resources Optimization; Telephone Number Requirements for IP-Enabled Service Providers; Local Number Portability Porting Interval and Validation Requirements; WC Docket No. 04-36, CC Docket Nos. 95-116 and 99-200, WC Docket Nos. 07-243 and 07-244; Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking.

Through this Order we expand the availability of local number portability, which has provided important benefits to consumers through the ability to take their number with them when they change providers. Congress viewed the ability of consumers to keep their phone numbers to be an important component of the effort to develop local phone competition and consumer choice, and our experiences of the past four years have borne out this prediction.

I'm pleased that this Order extends number portability to interconnected voice over Internet Protocol (VoIP) providers. To their credit, many interconnected VoIP providers have acknowledged the need to offer number portability to their customers. I fully agree with the Order's conclusion that consumers reasonably expect that they will have the ability to take their number with them when they switch to another provider, whether they subscribe to an interconnected VoIP provider or another provider of telecommunications services. So, I support the decision to apply these requirements evenly.

I also appreciate the Order's efforts to address the process for completing requested ports. Given the Order's findings that many ports are delayed due to difficulties with "burdensome porting-related procedures," the Commission should take steps to improve this process, not only for providers but also for consumers. In this respect, I am particularly hopeful that we can work to reduce the porting interval for simple porting requests, so that consumers are left on hold no longer than necessary.

This Order also responds to a 2005 remand from the U.S. Court of Appeals for the District of Columbia Circuit by re-imposing number portability requirements on small carriers. The Commission's prior decision to extend these requirements to small carriers was stayed because the Commission failed to comply with the Regulatory Flexibility Act (RFA). While this Order checks a box by completing the final analysis required by the RFA, we miss an opportunity here to address some of the critical and expensive underlying issues – such as the transport costs associated with calls to ported numbers – that are exacerbated by our porting requirements.

Four years ago, when these portability requirements were first imposed, I called on the Commission to resolve this critical intercarrier compensation issue as quickly and comprehensively as possible, so I'm disappointed that we've made no more progress since then, and fail to do so here. Although this Commission could do more to recognize and address the unique needs of small providers, I am pleased that small providers will have the ability to raise these issues before state commissions through the process set out by Congress in Section 251(f)(2) and I will concur to this portion of the Order.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization; Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements, WC Docket No. 04-36, CC Docket No. 95-116; CC Docket No. 99-200; WC Docket No. 07-243; WC Docket No. 07-244, Report And Order, Declaratory Ruling, Order On Remand, And Notice Of Proposed Rulemaking.

As both Congress and this Commission have recognized, the ability of a customer to retain his or her local telephone number when switching providers is a critical component for competition in the local exchange market. Local number portability promotes competition between providers of local telephone services by eliminating a major disincentive to switch carriers. Specifically, the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of services they can choose to purchase. Local number portability also helps ensure efficient use and uniform administration of numbering resources. In this order we take several steps to ensure that consumers continue to enjoy the benefits of local competition. We extend the benefits of number portability to VoIP customers by requiring VoIP providers to ensure that customers have the ability to port their telephone numbers when changing service providers to or from a VoIP provider. Additionally, we extend to interconnected VoIP providers the obligation to contribute to shared numbering administration costs, ensuring regulatory parity among providers of similar services.

We also take important steps to facilitate existing number portability so customers more fully benefit from these requirements. We clarify that no carriers may obstruct or delay the porting process by demanding more information than is necessary to validate a customer's request to keep their telephone number when changing carriers and streamline the porting process and time interval.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Final Regulatory Flexibility Analysis, Numbering Resource Optimization, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, WC Docket No. 07-243, WC Docket No. 07-244 WC Docket No. 04-36, CC Docket No. 95-116, CC Docket No. 99-200

The steps we are taking today promote consumer freedom in the voice and information service markets by allowing customers to port their telephone number to and from Voice over Internet Protocol (VoIP) services across all platforms. In this world of converging telecommunications technologies, it is vital that the Commission ensure that our regulations do not favor one type of service provider over another and that consumers are empowered to choose among all the services these new technologies offer. By extending local numbering portability requirements to VoIP providers, we now give consumers the ability to keep their telephone numbers when they decide to switch to or from wireline, wireless or VoIP services. Furthermore, the obligation to port numbers quickly and efficiently will further benefit consumers when they switch providers and give regulatory certainty to market players.

Our action today also fosters regulatory parity. Because VoIP services are increasingly becoming a substitute for traditional telephone service in the marketplace, it is critical that we extend local number portability obligations to those service providers. Just as we have previously required interconnected VoIP providers to comply with obligations for E911, universal service, customer proprietary network information protections and disability access, extending our local number portability requirements levels out the regulatory landscape even further.

However, in an effort to refine our overall numbering obligations, we seek comment on a number of specific issues affecting the extent of obligations and elements of the porting process. I will be particularly interested to review the comments regarding the validation of port requests and porting intervals.