



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROCEDURES TO IDENTIFY AND RESOLVE LOCATION DISCREPANCIES IN ELIGIBLE CENSUS BLOCKS WITHIN WINNING BID AREAS

WC Docket No. 10-90

Comment Date: [30 days after Federal Register publication]

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

I. INTRODUCTION

1. In this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on several proposals to implement a process for resolving location discrepancies at issue for Phase II auction support recipients. Specifically, the Bureau seeks comment on approaches to identify and resolve apparent discrepancies between the number of model-determined funded locations that Phase II auction support recipients are expected to serve (funded locations) and the actual number of locations that support recipients can serve (actual locations). The Bureau undertakes this action pursuant to the 2018 *Phase II Auction Order on Reconsideration*, which directed the Bureau to implement a review process to evaluate requests by Phase II auction support recipients who might seek adjustments in defined deployment obligations in exchange for corresponding reductions in support in circumstances where there are not enough actual locations for the provider to serve.¹

2. Pursuant to the process set forth by the Commission, the Bureau must: (1) collect probative evidence of actual locations from those Phase II auction support recipients choosing to participate in this process (participants) (including evidence demonstrating that the participants could find no additional actual locations other than those identified with location data); (2) make all such evidence available for review by relevant stakeholders and specify the types of evidence that such stakeholders should submit to challenge such evidence; (3) adjudicate individual claims for relief based on a preponderance of the evidence standard; (4) issue an order when appropriate to reduce deployment obligations and authorized support (on a pro rata basis); and, (5) conduct future audits of evidence submitted by participants.² While the Commission set some parameters for certain aspects of this process, it also directed the Bureau to adopt requirements and issue guidance necessary for implementation, consistent with prior Commission direction regarding funded location adjustments.³ The Commission directed the Bureau to “release a public notice or order (following its issuance of a notice

¹ *Connect America Fund*, WC Docket No. 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1390-92, paras. 23-28 (2018) (*Phase II Auction Reconsideration Order*).

² *Id.* at 1389, para. 23-24.

³ *Id.* at 1389, para. 24 (directing the Bureau to “set the parameters of this review process, set the parameters for the audits, and adopt any other necessary implementation details”).

and opportunity for comment) detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both [participants] and commenters.”⁴

II. BACKGROUND

3. In its 2011 *USF/ICC Transformation Order*, the Commission created the Connect America Fund (CAF) to comprehensively reform and replace existing high-cost support mechanisms with programs that rely on incentive-based, market-driven policies to efficiently distribute support from the Universal Service Fund (USF).⁵ To this end, the Commission’s Phase II programs combined “a new forward-looking model of the cost of constructing modern multi-purpose networks,” which became known as the Connect America Cost Model (CAM), and a competitive bidding process.⁶ The Commission explained that the CAM would be used to estimate the support necessary to serve locations in price cap areas where costs are above a specified benchmark but below a second “extremely high-cost” benchmark.⁷ In turn, this estimate would be used to calculate the number of funded locations that certain Phase II support recipients would be required to serve exclusive of locations already served by an unsubsidized competitor (funded locations).⁸

4. The Commission delegated to the Bureau the task of selecting a specific engineering model and inputs for the CAM after providing the public with notice and opportunity to comment.⁹ In 2013, the Bureau adopted a model platform that relies on a combination of commercial address-based residential data and census data to determine residential and business locations.¹⁰ In April 2014, the Bureau released an order finalizing decisions regarding the engineering assumptions in the CAM and adopting the inputs necessary to calculate the cost of serving census blocks in price cap areas.¹¹

5. In its *December 2014 Connect America Order*, the Commission finalized decisions necessary to proceed with offering model-derived support to price cap carriers on a state-by-state basis.¹² Pursuant to this program, price cap carriers electing to receive model-derived support committed to

⁴ *Id.*

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673, para. 20 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17725, para. 156.

⁷ *Id.*

⁸ *Id.*

⁸ *Id.* at 17701, para. 103.

⁹ *Id.* at 17680, para. 48.

¹⁰ *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 28 FCC Rcd 5301, 5322-23, para. 52. (WCB 2013) (*CAM Platform Order*). Although the Bureau has subsequently amended, updated, and adapted the CAM model many times, it has not changed these fundamental inputs. *See, e.g., Wireline Competition Bureau Announces Availability of Version 4.2 of the Connect America Fund Phase II Cost Model et al.*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 3884 (WCB 2014).

¹¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (WCB 2014) (*CAM Inputs Order*).

¹² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15645-46, paras. 1, 4 (2014) (*December 2014 Connect America Order*).

servicing all funded locations in their service territory within a state.¹³ The Commission also acknowledged, however, that the reliability and accuracy of funded location counts were limited by potential inaccuracies in the CAM data inputs, such as study area boundaries and business location sources.¹⁴ In most instances, the Commission explained, these inaccuracies were likely to be minor and cancel each other out across the multiple census blocks in a state served by price cap carriers electing support.¹⁵ The Commission recognized, however, that in particular cases, “the total number of locations assigned to a particular price cap carrier in a given state according to the model simply does not necessarily reflect the actual number of locations.”¹⁶ The Commission also stressed that the CAM location estimates are based on data representing conditions at a point in time but are used by the Commission to set obligations extending over the support term,¹⁷ and that “a variety of unforeseen factors, after the initial planning stage, [could] cause significant changes as a network is actually being deployed in the field”¹⁸

6. In its 2016 *Phase II Auction Order*, the Commission adopted a competitive bidding process intended to fund price cap areas where price cap carriers declined the offer of model-based support and areas that were otherwise removed or excluded from the offer of model-based support.¹⁹ Winning bidders would, as a condition of receiving support, commit to offering service to the funded locations (as predicted by the model) in each census block won in the auction.²⁰ The Commission determined each Phase II support recipient’s obligation in a state would be based on the sum of the funded locations in all of the areas won in that state.²¹

7. In the *Phase II Auction Reconsideration Order*, the Commission responded to a request by several commenters for clarification that Phase II auction support recipients would have an opportunity to bring to the Commission’s attention any discrepancies between the number of funded locations and the

¹³ *Id.* at 15645-46, para. 4.

¹⁴ *Id.* at 15659, para. 38.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *December 2014 Connect America Order*, 29 FCC Rcd at 15659, para. 38, n.88.

¹⁸ *Id.* (encouraging electing price cap carrier to raise with the Commission, during their first funded year, any known disparities between the number of funded locations and the number of actual locations and delegating authority to the Bureau to address any such situations); *id.* at 15660, para. 40, n.93, 15700, para. 154 (stating that electing price cap carriers may seek waiver of their build-out deadlines or obligations).

¹⁹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5968-74, paras. 51-73, 5979, para. 90 (2016) (*Phase II Auction Order*); *see also* Wireline Competition Bureau Releases List and Map of Eligible Census Blocks for the Connect America Phase II Auction (Auction 903), Public Notice, 32 FCC Rcd 10381 (WCB 2017)

²⁰ *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40; CostQuest Associates, Inc., Connect America Cost Model (CACM): Model Methodology 12-15 (Dec. 22, 2014), <https://transition.fcc.gov/wcb/CAM v.4.2 Methodology.pdf>.

²¹ *Phase II Auction Order*, 31 FCC Rcd at 5964, 5966, paras. 40, 46. The Commission also incorporated into the defined deployment obligations of Phase II auction support recipients, the same kind of flexibility afforded price cap carriers electing model-based support: Phase II auction support recipients may serve 95 percent of their funded locations and refund a pro rata share of their support that is based the number of unserved locations and one-half the average support for the top five percent of the highest cost funded locations nationwide. *Id.* at 5965-66, paras. 44-46.

number of actual locations.²² The Commission created such opportunity in order to facilitate appropriate adjustments to deployment obligations (with associated support reductions) where defined deployment obligations are infeasible to meet because of a shortage of actual locations.²³ Specifically, the Commission provided that within one year of the release of the Phase II auction closing public notice, Phase II auction support recipients seeking to reduce their defined deployment obligation must submit location data (including address and geocoded data) for every actual location within the areas won in the state and additional evidence demonstrating that no further locations could be found.²⁴ Relevant stakeholders, the Commission continued, would then have the opportunity to challenge the accuracy and completeness of such evidence and to provide their own evidence of actual locations.²⁵ The Commission delegated to the Bureau the authority to decide, based on a preponderance of the evidence and on a state-by-state basis, whether the participant's funded locations exceeded the total number of actual locations, thus warranting a reduction in the participant's defined deployment obligations and a pro rata reduction in support.²⁶ The Commission also provided that any data submitted by the participant would be subject to future audit.²⁷

III. DISCUSSION

A. Participant's Evidence

8. *Definition of an Actual Location.* We seek comment on how the Bureau should define an actual location for purposes of this review process. In the *CAM Inputs Order*, the Bureau defined funded locations as residential and small business locations and excluded enterprise locations assumed to be served with higher bandwidth dedicated fiber, such as community anchor institutions, certain large businesses, and wireless towers assumed to be served with higher bandwidth dedicated fiber.²⁸ In the *Phase II Auction Reconsideration Order*, the Commission stressed that a CAM location is a residential housing unit or small business served with mass market services and rejected commenters' arguments in

²² *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 22; *see also* Request for Clarification or Partial Reconsideration of Southern Tier Wireless, Inc., WC Docket No. 10-90 et al., at 4 (filed July 20, 2016); Petition for Reconsideration of Broad Valley Micro Fiber Networks, Inc., WC Docket No. 10-90 et al., at 3-4 (filed July 20, 2016); Petition for Clarification or Reconsideration of Crocker Telecommunications, LLC, WC Docket No. 10-90 et al., at 7 (filed July 18, 2016).

²³ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389-90, paras. 23, 25-26.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1389, para. 24, n.62 (explaining that the "new support amount in the state would be reduced by (total state support/model locations) x number of deficient locations").

²⁷ *Id.* at 1389, para. 23.

²⁸ *CAM Inputs Order*, 29 FCC Rcd at 4031-32, paras. 159 (excluding the costs of extending fiber to community anchor locations from cost-to-serve calculations, and the locations served by enterprise services from the unitization of the total middle mile cost of a census block, "to avoid location counts that are a mixture of residences and small businesses intermingled with enterprise locations"); *see also Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 27 (explaining that CAM funds housing units and businesses that receive mass market service); *USF/ICC Transformation Order*, 26 FCC Rcd at 17728, para. 167 n.269 (noting that, while it expected CAF support recipients to serve community anchor institutions in high-cost areas at reasonably comparable rates, the CAM should not "skew more funds to communities that have community anchor institutions").

favor of a more expansive definition.²⁹ In addition, a location need not be occupied when being reported as a served location, but it cannot be abandoned, derelict, condemned, or otherwise uninhabitable.³⁰

9. In general, CAF support recipients cannot report unfinished residential or business locations or ongoing or future real estate developments as served locations³¹ in satisfaction of build-out requirements. Given that this review process, however, will provide the basis for a participant's deployment obligation over a 10-year support term, the Bureau seeks comment on whether actual locations should include prospective developments that have a reasonable certainty of coming into existence within the support term. We seek comment on the potential evidentiary obstacles to implementing this modification. How might participants learn of such prospective developments and the number of future locations associated with them? Do development plans routinely indicate the number of residential and business units? Is such information available from local governments and authorities, and does the amount and type of information available from such entities vary to a degree that could provide an unfair advantage or disadvantage to participants based on their geographic areas? As an alternative, should we rely on relevant stakeholders to submit evidence of such locations in their submissions?

10. *Reliability and Validity of Data.* In the *Phase II Auction Reconsideration Order*, the Commission required participants not only to submit location data but also to provide evidence demonstrating that they could not find any additional actual locations in their eligible areas within the state.³² In doing so, the Commission expressed concern that participants would otherwise report only "cherry pick[ed]" locations, i.e., the easiest and least expensive locations to serve, and omit all other locations.³³ The Commission directed the Bureau to identify the information that must be submitted to fulfill this purpose.³⁴ The Bureau expects that such information must demonstrate the completeness, reliability, and validity of the actual location data submitted by participants. Accordingly, the Bureau proposes that participants in this review process submit a description in narrative form of the methodologies used to identify structures within their eligible areas and distinguishing actual locations from other kinds of structures.

11. The Bureau seeks comment on whether to require that participants use a particular method to identify the geocoordinates and addresses of actual locations or permit carriers to choose their method(s) and correct for inaccuracies. For purposes of reporting deployed locations, USAC has published guidance on three generally accepted methods of geolocation, i.e., (1) GPS in the field, (2) desktop geolocation using web-based maps and imagery, and (3) automated address geocoding

²⁹ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390-1391, para. 27 (rejecting commenters' untimely collateral attacks on the definition of "location" as used in the CAM estimate).

³⁰ See *HUBB Public Notice*, 31 FCC Rcd at 12905 (specifying that a location need not be occupied to be counted as a served location so long as the location has not been condemned or to be demolished or such location is "open to the elements" such that "the roof, walls, windows, and/or doors no longer protect the interior from the elements").

³¹ A served location, the Commission has explained, is a location to which a CAF support recipient commercially offers voice and broadband meeting all public interest requirements specific to the funding type; a recipient offers such service if it is able to provide it to a customer within 10 business days of the customer's request. See *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1435, para. 14 (2018); *HUBB Public Notice*, 31 FCC Rcd at 12902.

³² *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 25.

³³ *Id.*

³⁴ *Id.* at 1389, para. 24.

(frequently reliant on third-party address data).³⁵ Each of these methods will produce variable levels of accuracy in terms of identifying the specific situs of the location. For example, desktop geolocation and, to an even greater extent, automated address geocoding may produce interpolated geocoordinates and addresses that do not describe a situs with the required level of granularity to produce accurate results.³⁶ Such inaccuracies, in turn, increase the likelihood that the list of actual locations produced by participants will exclude certain locations, such as those adjacent to ineligible areas or those that include multiple dwelling units (MDUs). However, the potential shortcomings of geolocation methods may be minimized through specific practices.

12. We seek comment on methodological and evidentiary standards necessary to ensure that participants have used geolocation method(s) consistently and comprehensively to accurately identify all actual locations in eligible areas within the state. How would such standards differ if we were to allow any of the three geolocation methods or combinations of such methods? For example, should the Bureau require participants submitting location data based on GPS field research to also submit grid data, mileage receipts, weekly logs, or some other kind of evidence to demonstrate that they used GPS to identify every actual location? Should the Bureau require participants relying on desktop geolocation or automated address geocoding to use more than one application or source? Should the Bureau require such participants to disclose details about the application/source data, such as how and when such data were collected? Should we require participants using such methods to test the reliability and validity of the source/application data when applied to their specific eligible areas? Should the Bureau require all participants (regardless of geolocation method) to submit photographic evidence demonstrating the reasons for excluding structures from their list? We seek comment on these proposals.

B. Relevant Stakeholders' Evidence

13. In the *Phase II Auction Reconsideration Order*, the Commission explained that as part of this review process, “[r]elevant stakeholders would have the opportunity to review and comment on the information [submitted by participants] and to identify other locations...”³⁷ We seek comment on how we should define “relevant stakeholders.” Specifically, we propose that state and local authorities and Tribal governments as representatives of individuals residing in supported areas be allowed to file comments as part of the process. Should we accept comments from individuals as well? Should we accept comments from potential customers of participants? If we were to adopt a broad definition of “relevant stakeholder” that includes all potential customers, how do we verify that the commenter is a potential customer? Should we avoid collecting personally identifiable information (PII)? As further discussed below, would a protective order sufficiently protect participants from the premature disclosure and/or misuse of their data?

14. We seek comment on the evidence that must be submitted by relevant stakeholders to effectively rebut or refute the participant’s contentions. We expect that stakeholders will identify specific locations that they assert are wrongfully omitted from the participant’s list of actual locations. We propose that stakeholders seeking to report specific locations omitted from the participant’s list must submit the same kind of location evidence that we require of participants, i.e., latitude and longitude coordinates and addresses (or geographic markers if addresses are unavailable), as well as some additional evidence supporting the existence and placement of the location. We seek comment on other forms of evidence that could also prove the existence or situs of individual locations. For example,

³⁵ Universal Service Administrative Company, *Geolocation Methods: A Guide to Successfully Collecting Broadband Deployment Data*, <https://www.usac.org/res/documents/hc/pdf/tools/HUBBGeolocationMethods.pdf>.

³⁶ *See id.* at 5.

³⁷ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 23.

should the Commission accept billing statements, property records, images or pictures of houses at a specific address or intersection? Should we accept screenshots of houses from Google maps or other publicly available mapping services? How would we evaluate and weigh such evidence?

15. We propose to dismiss any challenge that lacks some evidentiary showing. We also propose not to allow stakeholders to submit alternative evidence of locations based on public or private data sources that the stakeholder cannot conclusively demonstrate to be significantly more accurate than the recipient's data sources. We seek comment on these proposals.

16. We propose that evidence of omitted locations from relevant stakeholders be submitted in a similar format to the data on actual locations submitted by Phase II auction support recipients. The Bureau intends to review the information submitted by relevant stakeholders and modify lists of actual locations as part of its final adjudicatory decision.

C. Submission of Evidence

17. *HUBB Reporting of Location Evidence.* The Bureau proposes that participants report tabular data on actual locations, including addresses and geographic coordinates.³⁸ We propose that participants submit such data in the HUBB or a similar web-based data submission application managed by USAC. There are several advantages to this approach. First, the technology used in the HUBB is designed to accept addresses and geographic coordinates for specific locations.³⁹ Second, the HUBB provides certain data validations, including checks to ensure entries are not duplicates and are located within specific census blocks.⁴⁰ Thus, the HUBB facilitates timely correction of data submission errors prior to the close of a filing deadline. Third, the Bureau and USAC have released specific guidance for the reporting of served locations, which may be adapted to the reporting of actual location data for purposes of this review process.⁴¹ Fourth, the use of the HUBB will help alleviate the burden associated with reporting data on served locations (which all Phase II auction support recipients will need to submit in future years) because such data should be readily convertible to the served location evidence.⁴² In this regard, while there is no specific requirement that participants deploy to their reported actual locations in future years, we expect that, in most instances and absent significant future demographic changes, there will be an overlap between actual locations and served locations. As further discussed below, this overlap should be useful for auditing purposes. Finally, the HUBB permits controlled access to data, which obviates the need to create a separate service for this purpose and limits potential delays associated with

³⁸ *Id.* at 1389, para. 23 (directing the Bureau to “establish the procedures and specifications for the submission of [actual location data], such as collecting the data through the Universal Service Administrative Company’s (USAC) High Cost Universal Service Broadband (HUBB) online location reporting portal”).

³⁹ *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (HUBB Public Notice).

⁴⁰ See Universal Service Administrative Company, Data Validator, <https://caf.universalservice.org/validator>. Carriers entering serviced location data must, for each physical situs, include a latitude and longitude data with a value in decimal degrees to five decimal places, and for each location, an address meeting United States Postal Service (USPS) standards or, if unavailable, one or more commonly used geographic markers, such as street intersection. See generally Universal Service Administrative Company High Cost Universal Broadband (HUBB) Data Formatting Instructions, <https://www.usac.org/hc/tools/hubb.aspx>.

⁴¹ See *id.*; Universal Service Administrative Company, Filing Geolocated Broadband Deployment data, <https://usac.org/hc/tools/hubb.aspx>.

⁴² 47 CFR § 54.316(a)(4).

such a service. As discussed below, controlled access will also help the Bureau protect location data that may implicate privacy concerns.

18. We seek comment on these and other ways the web-based functionality may be used to facilitate the submission of actual location evidence and ways that the HUBB may be adapted to fulfill this purpose. We also seek comment on whether participants may face specific obstacles or burdens in submitting location data electronically into the HUBB or a similar system.

D. Certifications and Deadlines for the Submission of Evidence

19. In the *Phase II Auction Reconsideration Order*, the Commission requires participants to file actual location data “within a year” of the publication of the Phase II auction closing public notice.⁴³ We propose applying this deadline to all evidence that the Bureau ultimately requires of participants.

20. The Bureau proposes to open a window, 14 days before this deadline and ending on the deadline, for participants to certify, under penalty of perjury, the truth and accuracy of their location data and associated petition. The certification will be mandatory and must be signed by an individual with relevant knowledge (such as an officer of the company), certifying under penalty of perjury that the participant has engaged in due diligence to verify statements and evidence presented in this challenge process and that such information is accurate to the best of the certifying party’s knowledge and belief. By opening a filing window rather than permitting participants to certify their data and information at any time during the first year, the Bureau would help ensure that a participant’s data reflects the most recent facts on the ground and that the participant does not omit new or prospective building developments coming into being toward the end of the one-year time frame for compiling and submitting such evidence.

21. Alternatively, the Bureau could permit certifications at any time prior to the final deadline but would also require participants to monitor their supported areas within the state, add any new locations (or potential developments) or remove any locations determined to be ineligible prior to the two-week time frame proposed above and recertify their data. We emphasize that regardless of when participants submit their data and information, they will have a good faith obligation to amend or correct data that they later discover to be inaccurate or incomplete. Such obligation will extend until completion of the 10-year funding term. We seek comment on these options.

22. We propose that the Bureau review the actual location evidence submitted by Phase II Auction support recipients and, within 60 days of their filing deadline, announce *prima facie* cases for adjustment based on the submission of relevant and complete data. We propose that relevant stakeholders will then have 90 days to submit evidence and rebuttals. Like the data and related filings of participants in this review process, any submission by a relevant stakeholder must be signed by an individual with relevant knowledge, certifying under penalty of perjury, that the information presented is accurate to the best of his or her knowledge and belief. Once this 90-day timeframe expires, the participant will have 15 days to submit a reply. We seek comment on the proposed timeframes by which relevant stakeholders must submit their evidence to challenge participant’s data and by which participants may reply to such challenge. Specifically, we seek comment on whether these proposed timeframes adequately serve our goal of providing a meaningful opportunity for challenge, while concluding this challenge process in a reasonable timeframe. We propose that strict adherence to these deadlines is necessary to provide an adequate opportunity for relevant stakeholders and participants to contest data and findings.

E. Adjudication of Challenges

23. Consistent with standards of review adopted for similar review processes, the Commission adopted a preponderance of the evidence standard to evaluate the merits of participants’

⁴³ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 23.

claims for adjustment of their defined deployment obligations.⁴⁴ The Bureau also proposes that participants bear the burden of persuasion. Accordingly, if the Bureau finds that the participant has failed to demonstrate that it is more likely than not that the CAM-estimated number of funded locations do not reflect the facts on the ground, the Bureau will not modify the defined deployment obligation. We note that placing the burden of persuasion on the participant encourages the participant to fully present its evidence and further tempers any incentive to “cherry pick” locations.

24. The Commission has directed that, in circumstances where the Bureau determines that modification of the participant’s number of funded locations is warranted, it must reduce the authorized support on a pro rata basis.⁴⁵ As part of its adjudicatory order, the Bureau will re-authorize support at the new reduced amount. We propose that, given the timing of this review process, if the participant has already been authorized to receive support, the Bureau will also order a reduction in future payments for the remainder of the support term proportionally to reflect the total amount of reduction. We also propose to allow participants to promptly adjust their letters of credit to reflect the new authorized funding amount once the Bureau’s order modifying the authorized support is issued. We seek comment on these proposals.

F. Confidentiality of Evidence

25. We note that the Commission treats location data for served locations as non-confidential and has required the public disclosure of such information.⁴⁶ The public interest in accessing these data to ensure transparency and oversight, however, is significantly greater than in accessing evidence of actual locations, particularly before the Bureau issues an order concluding its adjudication of the individual merits of a participant’s claim.⁴⁷ Further, unlike evidence of served locations, unverified lists of actual locations and related evidence may indirectly reveal future deployment plans or other information that could be used to the competitive disadvantage of participants. The responsive comments of relevant stakeholders could potentially link addresses or other information to specific individuals. Such data, if published, could raise important privacy concerns and trigger statutory protections against agency disclosures, such as outlined in the Privacy Act of 1974.⁴⁸

26. We seek comment on what steps the Bureau should take to ensure that privacy and competitive interests are not compromised. Should the Commission adopt a protective order to control stakeholders’ use of participants’ information pending completion of the review process? Should we require participants and/or relevant stakeholders to seek confidential treatment of their information pursuant to section 0.459 of the Commission’s rules or should we adopt a presumption that such

⁴⁴ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24 (citing *Connect America Fund et al.*, WC Docket No. 10-90, WT Docket No. 10-208, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6312, para. 63 (2017); *Connect America Fund*, Report and Order, 28 FCC Rcd 7766, 7779, para. 33 (2013)).

⁴⁵ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 24, n.62.

⁴⁶ See *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, Report and Order et al., 31 FCC Rcd 3087, 3164, para. 221 (2016) (“USAC must provide the public with the ability to easily view and download non-confidential information, including ... the geocoded location information ... for both individual carriers and in aggregated form.”).

⁴⁷ Cf. *Connect America Fund et al.*, WC Docket 10-90, Order, 32 FCC Rcd 1445, 1448, para. 11 (2017) (finding that “little harm will result from delay in the public’s access to [location] data by a few months, and any such harm is outweighed by the public interest benefit of allowing carriers sufficient time to collect and file correct and accurate data”).

⁴⁸ Privacy Act of 1974, 5 U.S.C. § 552a.

information is confidential, at least until the adjudicatory process is complete?⁴⁹ Should or must we review and aggregate this evidence and release it for public consumption after the Bureau adjudicates the request? Should or must the Bureau release such evidence and findings for all participants at the same time, or can it do so on a rolling basis as it resolves individual requests for relief? We seek comment on these issues.

G. Audit Process

27. Phase II auction support recipients, like all recipients of high-cost support, are subject to compliance audits and other investigations to ensure compliance with program rules and orders.⁵⁰ As USF administrator, USAC has the authority and responsibility to audit USF payments.⁵¹ The Commission has designated the Managing Director as the agency official responsible for ensuring “that systems for audit follow-up and resolution are documented and in place, that timely responses are made to all audit reports, and that corrective actions are taken.”⁵² The Commission resolves contested audit recommendations and findings, either on appeal from the Bureau or directly, if the challenge raises novel questions of fact, law, or policy.⁵³

28. In the *Phase II Auction Reconsideration Order*, the Commission also specified that any data submitted by participants pursuant to this review process is subject to potential future audit.⁵⁴ The Commission directed the Bureau to adopt parameters of such an audit process.⁵⁵ Accordingly, the Bureau seeks comment on this audit process. Specifically, should we define circumstances that will trigger an audit, such as defaulting on deployment obligations in subsequent years? Should an audit be triggered if a participant frequently misreports served locations evidence? Should an audit be triggered if, at the end of the support term, the reported served locations differ significantly from the reported actual locations – for instance, if 30 percent (or some higher percentage) of the reported served locations are not included on the actual locations list? Should we audit all participants within a set time frame, for instance, in the two years following any modification to a defined deployment obligation?

⁴⁹ 47 CFR § 0.459(a)(4).

⁵⁰ *Id.* § 54.320(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17864, para. 621.

⁵¹ 47 CFR § 54.707 (endowing USAC with authority to audit carriers).

⁵² *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15834, para. 76 (2004).

⁵³ 47 CFR § 54.722(a) (“Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.”); 47 U.S.C. § 155(c)(4) (“Any person aggrieved by any such order, decision, report or action [[taken on delegated authority] may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission.”); *id.* § 405(a) (“After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 155(c)(1) of this title, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 155(c)(1) of this title, in its discretion, to grant such a reconsideration if sufficient reason therefor be made to appear.”).

⁵⁴ *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 23-24.

⁵⁵ *Id.* at 1389, para. 24.

29. Under section 54.320(b) of the Commission’s rules, all recipients of high-cost support must maintain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules and must maintain such records for a minimum of 10 years from the receipt of funding.⁵⁶ Are the current record retention requirements adequate to facilitate audits of participants? Are any additional measures necessary to ensure that participants retain and provide the relevant and complete documentation to auditors upon request?

30. If, during the audit, it is discovered that the participant failed to report actual locations when it certified its data, what are the appropriate consequences? Should the Bureau retroactively require that the participant deploy to the CAM estimated number of locations despite the reduction in support? If the participant then defaults by failing to build to the CAM estimated number of locations, should the participant be required to refund support in accordance with default procedures? Should the Bureau treat the participant as if it has defaulted on its deployment obligations in total and seek recovery of all authorized support? Should consequences differ if it is determined that the participant intentionally omitted actual locations or was grossly negligent in researching locations? We note that if the Bureau determines that the participant intentionally or negligently misrepresented actual locations, the filing may trigger possible forfeiture penalties.⁵⁷

31. We seek comment on these proposals and on any alternatives. If commenters believe different procedures would better serve the Commission’s goals of granting Phase II auction support recipients relief from defined deployment obligations that may be impossible to fulfill (as opposed to merely difficult or more expensive to fulfill), and providing funding recipients with some certainty about their defined deployment obligations as they plan deployments for future years (without prematurely excluding ongoing developments), they should provide a detailed description of their preferred alternative. We welcome suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

IV. PROCEDURAL MATTERS

32. *Initial Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁵⁸ the Bureau has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Public Notice. The IRFA is attached to this Public Notice as an appendix. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided at the beginning of this Public Notice. The Bureau will send a copy

⁵⁶ 47 CFR § 54.320(b) (requiring recipients of high-cost support to retain, for at least 10 years, all records necessary to demonstrate to auditors that the support received was consistent with universal service high-cost program rules and to make these documents available upon request to the FCC (and any of its bureaus or offices) and to USAC, and to their respective auditors).

⁵⁷ *Id.* § 1.17(a)(2) (stating that no person may provide, in any written statement of fact “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading”); *see also Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-17, 4021, paras. 1-2, 12 (2003) (stating that the revision to section 1.17 of the Commission’s rules is intended to “prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive”).

⁵⁸ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁵⁹

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

34. *Permit but Disclose Ex Parte Contact.* For the purposes of the Commission's *ex parte* rules, information filed in this proceeding will be treated as initiating a permit-but-disclose proceeding under the Commission's rules.⁶⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).⁶¹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.⁶² If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.⁶³ Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).⁶⁴ In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).⁶⁵ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules

IV. Filing Requirements

35. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first

⁵⁹ See 5 U.S.C. § 603(a). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the Federal Register. *Id.*

⁶⁰ See 47 CFR § 1.1206.

⁶¹ *Id.* § 1.2016(b)(2)(iii).

⁶² *Id.* § 1.206(b)(1).

⁶³ *Id.*

⁶⁴ *Id.* § 1.1206(b)(2).

⁶⁵ *Id.* § 1.1206(b)(2)(i); *see also id.* § 1.49(f).

page of this document.⁶⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), <http://fjallfoss.fcc.gov/ecfs2/>.⁶⁷

36. *Paper Filings.* Parties who choose to file by paper must file an original and one copy 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. All filings submitted to the FCC must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *Hand or Messenger Delivery.* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.
- *Commercial Overnight Mail.* Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- *U.S. Postal Service First-Class, Express, and Priority Mail.* U.S. Postal Service mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty). *Additional Information.* For additional information on this proceeding, contact Nissa Laughner at (202) 418-1358 or Nissa.Laughner@fcc.gov, of the Wireline Competition Bureau, Telecommunications Access Policy Division.

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⁶⁶ 47 CFR §§ 1.415, 1.419.

⁶⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

APPENDIX

Initial Regulatory Flexibility Analysis

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

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

2. The Bureau is implementing a process, adopted by the Commission in its *Phase II Auction Reconsideration Order*, for the modification of defined deployment obligations where the number of locations within a funding recipient's bid areas within the state (actual locations) fall short of the CAM-estimated number of locations (funded locations).⁴ The Commission directed the Bureau to gather evidence of, actual locations from Phase II auction support recipients participating in this review process (participants), included addresses and geocoded data (actual location data) within one year of the release of the Phase II auction closing public notice as well as additional evidence, as specified by the Bureau, demonstrating no additional actual locations could be found; to enable relevant stakeholders to challenge such evidence and submit additional evidence of actual locations; to adjudicate participants' claims for relief based on a preponderance of the evidence standard; and, where such standard has been met, to reduce participants' obligations and support on a pro rata basis.⁵ The Commission also specified the data and information submitted by participants in support of their claims for relief are subject to future audit.⁶ The Commission directed the Bureau to adopt rules, requirements, deadlines, and other measures necessary to implement its review process after providing public notice and seeking public comment.⁷

3. This Public Notice proposes that participants file actual location data in the High Cost Broadband Portal (HUBB) maintained by the Universal Service Administrative Company (USAC), and separately file a narrative petition detailing the reliability and validity of such data to demonstrate that no additional locations may be found. This Public Notice seeks comment on the various forms of evidence that should be considered for purposes of determining reliability and validity as well as the kinds of evidence that relevant stakeholders should submit to effectively challenge participants' evidence. The Bureau emphasizes that it will not consider assertions about actual locations that are offered without supporting evidence. The Bureau clarifies the Commission's one-year deadline for the submission of location data and proposes that participants file their associated petitions by this deadline. The Bureau

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 *Id.* § 603(a).

⁴ *Connect America Fund*, WC Docket No. 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1390-92, paras. 23-28 (2018).

⁵ *Id.* at 1389, para. 23-24.

⁶ *Id.* at 1389, para. 23.

also proposes specific deadlines for the filing of petitions by relevant stakeholders and the filing of replies. The Bureau proposes that both participants and relevant stakeholders certify, under penalty of perjury, the truth and accuracy of all such submissions. In addition, the Bureau seeks comment on various proposals relating to the adjudication of requests for support modifications and future auditing processes relating to participants' submissions.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to the Public Notice is contained in sections 1, 4(i), 4(j), 214, and 218, of the Communications Act of 1934, as amended.⁷

C. Description and Estimate of the Number of Small Entities to Which the Proposed 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 proposed rule revisions, if adopted.⁸ The RFA generally defines the 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 SBA.¹¹

1. Total Small Entities

6. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.¹² First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹³ These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹⁴

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁵

⁷ 47 U.S.C. §§ 151,154(i), (j), 214, 218.

⁸ See 5 U.S.C. § 603(b)(3).

⁹ See *id.* § 601(6).

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

¹¹ See 15 U.S.C. § 632.

¹² See 5 U.S.C. § 601(3)-(6).

¹³ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹⁴ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹⁵ 5 U.S.C. § 601(4).

Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).¹⁶

8. Finally, the small entity described as a “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.”¹⁷ U.S. Census Bureau data from the 2012 Census of Governments¹⁸ indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁹ Of this number there were 37,132 General purpose governments (county²⁰, municipal and town or township²¹) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts²² and special districts²³) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have

¹⁶ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html//tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

¹⁷ 5 U.S.C. § 601(5).

¹⁸ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

¹⁹ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States., <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

²⁰ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

²¹ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²² See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

²³ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

populations of less than 50,000.²⁴ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²⁵

2. Wireline Providers

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁶ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁷ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers and under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.²⁸ U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of that total, 3,083 operated with fewer than 1,000 employees.²⁹ Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

11. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest

²⁴ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States—States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States—States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

²⁵ *Id.*

²⁶ U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁷ 13 CFR § 121.201 (NAICS Code 517311).

²⁸ See *id.* § 121.201. The Wired Telecommunications Carrier category formerly used NAICS code 517110. As of 2017 the U.S. Census Bureau definition shows NAICS code 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁹ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

applicable NAICS Code category is Wired Telecommunications Carriers.³⁰ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.³¹ U.S. Census Bureau data indicate that 3,117 firms operated the entire year.³² Of this total, 3,083 operated with fewer than 1,000 employees.³³ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.³⁴ Of this total, an estimated 1,006 have 1,500 or fewer employees.³⁵ Thus using the SBA's size standard the majority of incumbent LECs can be considered small entities.

12. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁶ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³⁷ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, 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.

13. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."³⁸ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent

³⁰ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

³¹ *Id.*

³² See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

³³ *Id.*

³⁴ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

³⁵ *Id.*

³⁶ 13 CFR § 121.201 (NAICS Code 517311).

³⁷ See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

³⁸ 5 U.S.C. § 601(3).

LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³⁹ 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.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers.⁴⁰ The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴¹ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.⁴² Of that number, 3,083 operated with fewer than 1,000 employees.⁴³ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁴⁴ Of this total, an estimated 317 have 1,500 or fewer employees.⁴⁵ Consequently, the Commission estimates that the majority of interexchange service providers that may be affected are small entities.

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.⁴⁶ According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.⁴⁷ Consequently, the Commission estimates that the majority of OSPs are small entities.

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.⁴⁸ According to Commission data, 193 carriers have

³⁹ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

⁴⁰ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017, the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁴¹ *Id.*

⁴² See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

⁴³ *Id.*

⁴⁴ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

⁴⁵ *Id.*

⁴⁶ 13 CFR § 121.201, NAICS code 517311.

⁴⁷ *Trends in Telephone Service*, tbl. 5.3.

⁴⁸ See 13 CFR § 121.201, NAICS code 517911.

reported that they are engaged in the provision of prepaid calling cards.⁴⁹ Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.⁵⁰ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities.

17. *Local Resellers.* The SBA has developed a small business size standard for Telecommunications Resellers which includes Local Resellers.⁵¹ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁵² Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁵³ Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.⁵⁴ U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.⁵⁵ Of that number, all operated with fewer than 1,000 employees.⁵⁶ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁵⁷ Of these, an estimated 211 have 1,500 or fewer employees.⁵⁸ Consequently, the Commission estimates that the majority of Local Resellers are small entities.

18. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers which includes toll resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁹ According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁶⁰ Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.⁶¹ Consequently, the Commission estimates that the majority of toll resellers are small entities.

19. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers

⁴⁹ See *Trends in Telephone Service* at Table 5.3.

⁵⁰ See *id.*

⁵¹ See 13 CFR § 121.201; NAICS Code 517911.

⁵² U.S. Census Bureau, 2012 NAICS Definition, NAICS Code 517911 "Telecommunications Resellers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2017+NAICS+Search&search=2017>.

⁵³ *Id.*

⁵⁴ 13 CFR § 121.201, NAICS code 517911.

⁵⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517911 Telecommunications Resellers), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517911.

⁵⁶ *Id.*

⁵⁷ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

⁵⁸ *Id.*

⁵⁹ See 13 CFR § 121.201, NAICS code 517911.

⁶⁰ See *Trends in Telephone Service* at Table 5.3.

⁶¹ See *id.*

that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶² U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁶³ According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁶⁴ Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.⁶⁵ Consequently, the Commission estimates that most Other Toll Carriers are small.

20. *800 and 800-Like Service Subscribers.*⁶⁶ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁷ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁶⁸ According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.⁶⁹ We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

3. Wireless Providers (Except Satellite).

21. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁷⁰ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁷¹ For this industry, U.S. Census data for 2012 show that there were

⁶² See 13 CFR § 121.201, NAICS code 517311.

⁶³ See http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁶⁴ See *Trends in Telephone Service* at Table 5.3.

⁶⁵ See *id.*

⁶⁶ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁶⁷ See 13 CFR § 121.201, NAICS code 517911.

⁶⁸ See *Trends in Telephone Service* at Tables 18.7-18.10.

⁶⁹ See *id.*

⁷⁰ NAICS Code 517210. See U.S. Census Bureau, *American Fact Finder—About the Data*, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

⁷¹ 13 CFR § 121.201 (NAICS code 517210).

967 firms that operated for the entire year.⁷² Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁷³ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

22. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that may be affected by our actions.⁷⁴ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.⁷⁵ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

23. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.⁷⁶ The SBA has approved these definitions.⁷⁷

24. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)⁷⁸ and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.⁷⁹ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁸⁰ Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees

⁷² U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS 51720, “Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012”).

⁷³ Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁷⁴ See FCC, *Universal Licensing System*, <http://wireless.fcc.gov/uls> (last visited June 20, 2017). For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁷⁵ *Trends in Telephone Service*, at tbl. 5.3.

⁷⁶ *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

⁷⁷ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

⁷⁸ 13 CFR § 121.201, NAICS code 517210.

⁷⁹ *Id.*

⁸⁰ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

or more.⁸¹ Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.⁸² Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁸³ Therefore, more than half of these entities can be considered small.

4. Broadband Internet Access Service Providers

25. Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.⁸⁴ Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.⁸⁵ The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.⁸⁶ U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁸⁷ Consequently, under this size standard the majority of firms in this industry can be considered small.

26. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Initial Regulatory Flexibility Analysis.

4. Satellite Telecommunications.

27. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or

⁸¹ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁸² See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁸³ *Id.*

⁸⁴ See 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017, the U.S. Census Bureau definition show the NAICS code as 517311. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?%20pid=ECN_2012_US_51SSSZ2&prodType=table.

reselling satellite telecommunications.”⁸⁸ Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁸⁹ For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.⁹⁰ Of this total, 299 firms had annual receipts of less than \$25 million.⁹¹ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

5. Electric Power Generators, Transmitters, and Distributors

30. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of “establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”⁹² The SBA has developed a small business size standard for firms in this category: “A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.”⁹³ Census Bureau data for 2012 show that there were 1,1635 firms that operated for the entire year in this category.⁹⁴ Of these firms, 63 had 1,000 employees or more, and 1,572 had fewer than 1,000 employees.⁹⁵ Based on this data, a majority of these firms can be considered small.

6. All Other Telecommunications

31. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁹⁶ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and

⁸⁸ U.S. Census Bureau, 2017 NAICS Definitions, “517410 Satellite Telecommunications”; <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

⁸⁹ 13 CFR § 121.201, NAICS code 517410.

⁹⁰ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517410.

⁹¹ *Id.*

⁹² U.S. Census Bureau, 2012 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution,” <https://www.census.gov/econ/isp/sampler.php?naicscode=2211&naicslevel=4#> (last visited Aug.31, 2018).

⁹³ 13 CFR § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, n. 1.

⁹⁴ See U.S. Census Bureau, American FactFinder, Utilities: Subject Series - Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the United States: 2012, NAICS code 221122, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/22SSSZ5//naics~2211 (last visited Aug. 31, 2018).

⁹⁵ See *id.*

⁹⁶ See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

receiving telecommunications from, satellite systems.⁹⁷ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁹⁸ The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$ 32.5 million or less.⁹⁹ For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year.¹⁰⁰ Of those firms, a total of 1,400 had annual receipts less than \$25 million and 42 firms had annual receipts of \$25 million to \$49, 999,999.¹⁰¹ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

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

32. In this Public Notice, the Bureau seeks public comment on procedures for implementing a review process for the modification of funding awarded under the Connect America Phase II auction. Certain proposals could result in additional reporting requirements.⁹⁷

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

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

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

35. The Public Notice seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the Public Notice, and the Commission will consider alternatives that reduce the burden on small entities.

36. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Public Notice, in reaching its final conclusions and taking action in this proceeding. The reporting requirements in the Public Notice could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See 13 CFR § 121.201, NAICS code 517919.

¹⁰⁰ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919.

¹⁰¹ *Id.*

accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

37. In the Public Notice, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Small entities may be more likely to seek relief from their obligations to serve the CAM-estimated number of funded locations. Small entities may also be more likely to challenge participants' requests for relief. The Bureau will consider comments from small entities as to whether a different standard should apply.

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

38. None.