6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[WC Docket Nos. 10-90, 14-58; CC Docket No. 01-92; FCC 16-33]

Connect America Fund, ETC Annual Reports and Certification; Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes targeted rule changes to our existing accounting and affiliate transaction rules to eliminate inefficiencies and provide guidance to rate-of-return carriers regarding our expectations for appropriate expenditures.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by either WC Docket No. 10-90, WC Docket No. 14-58 or CC Docket No. 01-92, by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, or Suzanne Yelen, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket Nos. 10-90, 14-58 and CC Docket No. 01-92; FCC 16-33, adopted on March 23, 2016 and released on March 30, 2016. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th St., SW, Washington, DC 20554 or at the following Internet address: http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0330/FCC-16-33A1.pdf. The Report and Order, Order and Order on Reconsideration that was adopted concurrently with the FNPRM are published elsewhere in this issue of the Federal Register.

I. INTRODUCTION

1. With this Further Notice of Proposed Rulemaking (FNPRM) and concurrently adopted Report and Order, Order, Order on Reconsideration, the Commission adopts significant reforms to place the universal service program on solid footing for the next decade to "preserve and advance" voice and broadband service in areas served by rate-of-return carriers. In 2011, the Commission unanimously adopted transformational reforms to modernize universal service for the 21st century, creating programs to support explicitly broadband-capable networks. In this Report and Order, Order, Order on Reconsideration, and FNPRM, the Commission takes necessary and crucial steps to reform our rate-of-return universal service mechanisms to fulfill our statutory mandate of ensuring that all consumers "have access to . . . advanced telecommunications and information services." In particular, after extensive coordination and engagement with carriers and their associations, the Commission modernizes the rate-of-return program to support the types of broadband offerings that consumers increasingly demand, efficiently target support to areas that need it the most, and establish concrete deployment obligations to ensure demonstrable progress in connecting unserved consumers. This will provide the certainty and

stability that carriers seek in order to invest for the future in the years to come. The Commission welcomes ongoing input and partnership as they move forward to implementing these reforms.

2. Rate-of-return carriers play a vital role in the high-cost universal service program. Many of them have made great strides in deploying 21st century networks in their service territories, in spite of the technological and marketplace challenges to serving some of the most rural and remote areas of the country. At the same time, millions of rural Americans remain unserved. In 2011, the Commission unanimously concluded that extending broadband service to those communities that lacked any service was one of core objectives of reform. At that time, it identified a rural-rural divide, observing that "some parts of rural America are connected to state-of-the art broadband, while other parts of rural America have no broadband access." The Commission focuses now on the rural divide that exists within areas served by rate-of-return carriers. According to December 2014 Form 477 data, an estimated 20 percent of the housing units in areas served by rate-of-return carriers lack access to 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) terrestrial fixed broadband service. It is time to close the gap, and take action to bring service to the consumers served by rate-of-return carriers that lack access to broadband. The Commission needs to modernize comprehensively the rate-of-return universal service program in order to benefit rural consumers throughout the country.

3. For years, the Commission has worked with active engagement from a wide range of interested stakeholders to develop new rules to support broadband-capable networks. One shortcoming of the current high-cost rules identified by rate-of-return carriers is that support is not provided if consumers choose to drop voice service, often referred to as "stand-alone broadband" or "broadband-only" lines. In the April 2014 Connect America FNPRM, 79 FR 39196, July 9, 2014, the Commission unanimously articulated four general principles for reform to address this problem, indicating that new rules should provide support within the established budget for areas served by rate-of-return carriers; distribute support equitably and efficiently, so that all rate-of-return carriers have the opportunity to extend broadband service where it is cost-effective to do so; support broadband-capable networks in a manner that is forward looking; and ensure no double-recovery of costs. The package of reforms outlined below solve

the stand-alone broadband issue and update the rate-of-return program consistent with those principles. The Commission also takes important steps to act on the recommendation of the Governmental Accountability Office to ensure greater accountability and transparency in the high-cost program.

4. In the FNPRM, the Commission proposes targeted rule changes to our existing accounting and affiliate transaction rules to eliminate inefficiencies and provide guidance to rate-of-return carriers regarding our expectations for appropriate expenditures. Consumers are harmed when "universal service provides more support than necessary to achieve our goals." The statute requires that universal service funds be used for their intended purposes – maintaining and upgrading supported facilities and services. The Commission proposes to eliminate a number of expenses from inclusion in a rate-of-return carrier's revenue requirement and calculations of high-cost support. The Commission also seeks comment on establishing measures governing prudent or reasonable expense levels for certain expense categories. The FNPRM further seeks comment on ways in which the cost allocation procedures between regulated and non-regulated activities and the affiliate transaction rules can be improved to reduce the potential for a carrier to shift costs from non-regulated to regulated services or to the regulated affiliate.

5. Second, the Commission seeks comment in the FNPRM on additional options for disaggregating support for those discrete areas that are served by an unsubsidized competitor and other issues associated with implementation of the competitive overlap rule.

6. Third, the FNPRM seeks comment on proposals to adopt a mechanism to provide additional support to unserved Tribal lands. The Commission has long recognized the distinct challenges in bringing communications service to Tribal lands.

7. Fourth, the FNPRM seeks comment on other measures that the Commission could take within the existing budget to encourage further broadband deployment by rate-of-return carriers.

8. Lastly, the FNPRM seeks comment on additional proposals to modify or potentially eliminate certain eligible telecommunications carriers' (ETC) certifications and reporting obligations so as to streamline ETC reporting requirements.

9. The actions the Commission takes today, combined with the rate-of-return reforms undertaken in the past two years, will allow us to continue to advance the goal of ensuring deployment of advanced telecommunications and information services networks throughout "all regions of the nation." Importantly, they build on proposals from and collaboration with the carriers and their associations. Through the coordinated reforms the Commission takes today, they will provide rate-of-return carriers with equitable and sustainable support for investment in the deployment and operation of 21st century broadband networks throughout the country, providing stability for the future. Achieving universal access to broadband will not occur overnight, but today marks another step on the path toward that goal.

II. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Permitted Expenses, Cost Allocation and Affiliate Transactions

10. With this Notice, the Commission commences a review of the extent to which certain investments and expenses incurred by a regulated local exchange carrier may be included in its rate base and revenue requirement for ratemaking and universal service fund (USF) purposes. The Commission's rules provide that local exchange carriers may not include expenses in their revenue requirement unless such expenses are "recognized by the Commission as necessary to the provision" of interstate telecommunications services. Similarly, high-cost support provided to an ETC must be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

11. The Commission has not comprehensively reviewed the continued reasonableness of its existing rules regarding permissible investments and expenses for local exchange carriers since the passage of the Telecommunications Act of 1996. Market and regulatory conditions have changed substantially since that time. Notably, regulated telecommunications carriers have expanded into the provision of retail broadband services, either directly or through affiliated entities. Regulated carriers also increasingly face competition, for both voice and broadband services, in portions of their incumbent territory from other facilities-based providers, such as cable and wireless providers. These changing conditions may impact the types of costs carriers attempt to include in their revenue requirement and the ways in which carriers allocate costs between regulated and non-regulated services and affiliates.

12. Moreover, with steady demands on the high-cost program and a shrinking contribution base, it is more important than ever that these limited funds be used solely for their intended purposes. Likewise, amidst challenging economic conditions, it simply is not right to expect consumers across the country, including those in rural areas, to reimburse rate-of-return carriers – through the regulated rates for interstate service – for excessive or otherwise inappropriate expenses.

13. While the Commission believes that most rate-of-return carriers properly record their costs and seek support only for the intended purposes, through audits, inquiries and other investigations, the Commission has recently been made aware of alleged abuses by rate-of-return carriers of the used and useful principles and its cost allocation rules. These situations involve rate-of-return carriers, for example, including questionable expenses in their revenue requirement, using support for purposes unrelated to the provision of services, and misallocating expenses among affiliates, or between regulated and non-regulated activities. Against that backdrop, the Commission concludes it is time to reevaluate the types of expenses that should be permitted—both in a carrier's revenue requirement and for recovery through high-cost support. Looking into the expenses permitted and the allocation of those expenses will help ensure that carriers are only recovering costs that are used and useful and prudently incurred, and in the case of high cost support, only costs that are necessary to the provision of interstate telecommunications services.

1. Discussion

a. Review of permitted expenses

14. The Commission begins our reevaluation of a rate-of-return carrier's ability to include certain types of expenses in their revenue requirement and high-cost support with consideration of the appropriate standard to be applied. As noted above, the Commission has used different terms in different situations—"used and useful," "prudent expenditure," and "necessary to the provision of." The Commission believes that these terms should be read consistently to describe those expenses that a carrier may appropriately include in its interstate rate base, interstate revenue requirement, and cost studies used to calculate high-cost support. Thus, they should reflect a business operation that is run efficiently to

provide telecommunications services. The costs should include amounts of long-term investment and current expenditures that a business would reasonably incur to provide telecommunications services, taking into account current and reasonably forecasted operating conditions and business levels. The Commission invites parties to comment on these standards and whether they should be viewed as applying a consistent standard to regulated, tariffed services and to expenditures that are recovered through high-cost support. To the extent that a party believes different standards should be applied, it should specify the situations in which such differences should apply, what the differences are, and how they should be treated within the accounting and cost allocation processes of the Commission. As parties respond to the issues raised below, they should consider the application of the standards in their comments.

15. The Commission recently indicated that ETCs may not recover certain types of expenses through high-cost support. Those expenses include the following: personal travel; entertainment; alcohol; food, including but not limited to meals to celebrate personal events, such as weddings, births, or retirements; political contributions; charitable donations; scholarships; penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments; membership fees and dues in clubs and organizations; sponsorships of conferences or community events; gifts to employees; and, personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC, including but not limited to personal expenses for housing, such as rent or mortgages.

16. The Commission seeks comment on explicitly prohibiting the inclusion of any of these expenses in a carrier's interstate revenue requirement, which would supersede any existing rules or precedent that might otherwise suggest these are legitimate expenditures. The Commission tentatively concludes that these expenditures are unnecessary to the provision of regulated interstate services and thus are not appropriately included in a rate-of-return carrier's interstate revenue requirement, just as they are not appropriately included in calculating the level of high-cost support a carrier receives. Recognizing that some of these enumerated types of expenditures are quite broad, however, the Commission invites

parties to indicate whether there is a definable subset of expenses within any of the categories that should not be excluded from a carrier's interstate revenue requirement. Parties believing there are specific types of expenses that should be included in the interstate revenue requirement should provide examples of such expenses, the reasons they are necessary, as well as specific language that would allow the Commission to distinguish these expenses from those that are appropriately excluded. The Commission also seeks comment on whether, if the Commission ultimately decides some of these expense categories, or a portion of them, should be allowed in a carrier's interstate revenue requirement, whether similar treatment should be accorded those expenses for purposes of high-cost support.

17. In addition to the expenses identified in the High Cost Oct. 19, 2015 Public Notice, the Commission proposes to prohibit additional expenses from inclusion in a carrier's interstate revenue requirement and also preclude their recovery through high-cost support. The additional expenses that the Commission proposes to disallow for these purposes include: artwork and other objects which possess aesthetic value; corporate aircraft, watercraft, and other motor vehicles designed for off-road use, except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads; any vehicles for personal use; tangible property not logically related or necessary to the offering of voice or broadband services; childcare; cafeterias and dining facilities; and, housing allowances or other forms of mortgage or rent assistance for employees. Like the expenses listed above, the Commission is concerned that some carriers may incur additional expenses of this nature that are not necessary to the provision of the supported service – voice telephony – and not necessary to the provision of regulated interstate services. If adopted, such a rule would overturn any existing rule or precedent that might suggest such expenditures are permissible.

18. The Commission invites parties to comment on whether there is any reason that these expense categories should not be completely excluded from a carrier's revenue requirement or its high-cost support. Parties making an argument for inclusion of these expenses in a carrier's revenue requirement should explain clearly why such expenses are necessary to the provision of a supported service or to the provision of a regulated interstate telecommunications service. The Commission invites

parties to indicate whether there is a definable subset of expenses within any of the categories that should not be excluded from a carrier's interstate revenue requirement or high-cost support. Parties believing that to be the case should provide examples of such expenses, the reason they are necessary, as well as specific language that would allow the Commission to distinguish these expenses from those that are appropriately excluded.

19. The Commission also invites parties to identify additional expenses that should be excluded from either a carrier's interstate revenue requirement, from calculations of high-cost support, or both. Parties identifying additional expenses to be excluded should address the reasons they are unnecessary to the provision of telecommunications service or to the provision of supported services. Parties seeking additional exclusions should also provide language that would allow the Commission to exclude such items if it elects to do so. With respect to ensuring the appropriate use of high-cost funds for certain expenses, our proposals apply to both price cap and rate-of-return carriers. Our proposals concerning permitted expenses for the revenue requirement would primarily apply to rate-of-return carriers, but they would also apply to price cap carriers in limited circumstances.

20. In addition to these categories, the Commission has seen instances in which "companies maintain comparatively high compensation portfolios for their executives." The Commission expressed concern that these and other expenses were not reasonable and necessary given a number of considerations. The Commission seeks comment on how to address potential concerns regarding such expenses for executives, those with close relationships to those executives, and a carrier's other employees and contractors.

21. The Commission is also aware of at least one instance in which costly benefits were sought to be provided to board members. Are there circumstances under which compensation for board members, including fees per-meeting, for special duties assumed, and for travel and per diem expenses should be deemed unreasonable? If so, on what basis? Is additional evaluation warranted where board members have a close relationship to someone in the company?

22. The Commission seeks comment on whether the costs that may be included in a carrier's revenue requirement for buildings purchased or rented by regulated telecommunications carriers should be limited. For example, in cases where excessive square footage of office or warehouse space is purchased by a regulated carrier in order to earn a rate of return on that space, should part of the price paid for the building be excluded from the revenue requirement? How should "excessive" be defined for this purpose? Are there objective metrics available on the square footage of office space per employee that is reasonable, or on the square footage of warehouse space that a carrier should reasonably require given the number of loops the carrier provides and the density of its service area? Are there objective metrics on the price per square foot that should be paid for office or warehouse space in specific locations?

23. Section 32.2002 provides that plant held for future use must be utilized within two years. This plant is included in the carrier's rate base. The Commission is concerned that carriers may have incentives to place excess capacity in the interstate regulated rate base that will not be used in the foreseeable future, with ratepayers bearing the cost. The Commission reminds carriers that the benefit from a used and useful investment must be realized within a reasonable amount of time. Thus, the Commission invites parties to comment on whether they should adopt a rule that would prohibit a regulated carrier from leasing capacity from its unregulated affiliate that is not presently utilized in the provision of voice or broadband services. Alternatively, could this concern be addressed by defining more precisely what constitutes reasonable projections of use and/or requiring that such capacity be used within a shorter timeframe than two years? Parties are invited to address the types of uses that should be considered to meet the requirement that excess capacity be used in the foreseeable future.

24. As explained above, carriers record their financial transactions in the USOA books of account as they occur. These amounts then flow through the allocation procedures in Parts 64, 36, and 69 with the implied assumption that the recorded amounts are reasonable, and thus prudently incurred. While the used and useful and prudent expenditure standards apply to all investments and expenses of the carrier, the principles considered under this standard have been interpreted only in

limited, specific cases. The Commission now seeks comment on whether the Commission should adopt more precise guidance regarding what constitutes a used and useful or otherwise prudent expenditure.

25. The Commission notes that transactions between non-affiliated parties that are negotiated at arm's length are generally presumed to produce commercially reasonable prices. Affiliate transactions, however, are not negotiated at arm's length and thus, may result in unreasonable prices absent standards governing how those transactions should be priced; that is why the Commission adopted rules for the pricing of affiliate transactions decades ago. The Commission now invites parties to comment on whether there are circumstances surrounding transactions between non-affiliated parties that might raise concerns about whether the resulting prices are reasonable. For example, would a close family relationship or cross-participation on boards of directors be situations that warrant more scrutiny of the price? The Commission invites parties to discuss these examples and to identify other examples that might raise concerns. Parties are invited to discuss whether presumptions concerning what would be a prudent expenditure could be employed to ensure that prices are reasonable.

26. The Commission's rules require a carrier in specified situations to record the purchase of a good or service from an affiliate at fair market value. The Commission invites parties to comment on whether the affiliate transaction standard should also be applied to goods and services acquired from non-affiliated entities. If not, parties should propose an alternative standard and explain why it is a preferable approach. The Commission also invites parties to comment on the factors that should be considered in determining whether a transaction is a prudent expenditure or is a reasonable market price in evaluating prices in situations identified as warranting a closer look. Are there circumstances where a prudent expenditure might be something other than the absolute lowest identified price? Parties are invited to identify other metrics beside cost and reliability that are relevant in determining whether an investment or expense is prudent for the purposes of our rules. Finally, are there specific circumstances under which a carrier should be required to make a good faith determination of fair market value for a good or service obtained from a non-affiliate, prior to incurring such expenses, for instance when the total aggregate

annual value of the good(s) or service(s) reaches or exceeds a specified threshold for purchases from a non-affiliate, as is done under section 32.27(b)(3) and (c)(3) for affiliates?

27. Finally, the Commission invites parties to comment on the best manner of implementing any decision to exclude the expenses identified in this section. Specifically, parties should address whether it would be sufficient to adopt an order simply identifying and defining which costs are not allowed, as has generally been the process in the past, or whether some rule revisions are necessary. If rule revisions are thought necessary, parties should address where in the process they can best be implemented. Part 32 excludes certain investments and expenses as non-regulated, while Part 64 allocates investments and expenses used to provide both regulated and non-regulated activities that are recorded in the regulated accounts of Part 32 between regulated and non-regulated activities. In addition, for purposes of determining whether a carrier's realized rate-of-return exceeds the maximum allowable rate of return, Part 65 specifies the determination of earnings and rate base. Parties are encouraged to address whether some cost disallowances would be better achieved through revisions to the Part 32 rules, while other cost disallowances could best be addressed through revisions to other rules in Parts 64, 65, 69, or some combination of these rules. The Commission is providing state commissions with notice of this in compliance with the requirements of section 220(i) of the Act in the event they decide to make some revisions to Part 32. In other words, is it better to first enumerate which expenses should be excluded from the revenue requirement as not used and useful in the provision of regulated services and then proceed with allocating costs, or is it better to rely on the cost allocation procedures in Part 64 to exclude such expenses? One of the goals of the USOA at the time it was adopted was that it remain stable over time. How should this be factored into the decision of where to make certain disallowances? Parties are invited to submit proposed language to accomplish the approach they recommend. Lastly, the Commission invites parties to comment on whether they should require rate-of-return carriers to identify their cost consultants, if any, in their FCC Form 481s.

b. Issues related to cost allocation and affiliate transactions

28. Rate-of-return carriers are subject to the Commission's longstanding Part 64 rules regarding the allocation of costs between regulated and non-regulated activities and to the affiliate transaction rules in Part 32. Under these rules, carriers currently apply broad principles in making such allocations, and the lack of specificity in the rules gives carriers a degree of discretion in making these allocation decisions. Therefore, there is an incentive to interpret the allocation rules in order to allocate as many costs as possible to their regulated activities, both to justify a higher interstate revenue requirement and to receive additional high-cost support. For instance, marketing costs could be recorded solely as regulated expenses, even though those marketing activities are designed to increase subscribership of retail broadband, i.e., non-regulated services. Given the lack of specific guidance, the additional costs associated with the provision of retail broadband services, and the incentive to allocate costs to regulated activities, the Commission concludes that it is time to revisit our allocation rules in order to provide greater clarity to rate-of-return carriers regarding how to determine the relative allocation of costs between regulated and non-regulated activities and affiliates.

29. As noted, the Commission's existing cost allocation rules relating to regulated versus non-regulated activities generally provide that costs shall be directly assigned to either regulated or non-regulated activities where possible, and common costs are to be allocated according to a hierarchy of principles. To the extent costs cannot be allocated on direct or indirect cost causation principles, they are allocated based on a ratio of all expenses directly assigned or attributed to regulated and non-regulated activities. In certain cases, the affiliate transaction rule requires fully distributed costs to be used to determine the charge to the affiliate or the carrier.

30. The Commission seeks comment on adopting new rules to improve the process of allocating costs among regulated and non-regulated services and between affiliates. The Commission also seeks a better understanding of how to detect cases of misallocation. Our goal is to reduce the potential ability of carriers to include expenses associated with non-regulated services in their regulated revenue requirements, and to preclude carriers from artificially inflating their high-cost support through

such actions. To this end, the Commission seeks comment on adopting a rule that would classify certain costs, such as general and administrative expenses, as common costs for purposes of applying the Part 64 and affiliate transaction rules when an entity provides broadband services directly, or through an affiliated entity. Are there other costs that should be treated as common costs in applying these allocation rules? Under such an approach, carriers would be precluded from including all of these expenses in their regulated revenue requirement, and instead, would be required to exclude some expenses based on the prescribed manner of allocation. Accordingly, the Commission also seeks comment on adopting rules that would prescribe the manner of allocation of common costs in particular situations. For example, are there certain common costs that the Commission should specify by rule that they should be allocated on the basis of the relative number of regulated lines compared to the total number of lines (both regulated and non-regulated) for the rate-of-return carrier and its broadband affiliate, if any? Are there other instances in which relative revenues or some other measure would be a better allocator, taking into account the ease of administering any such rule?

31. The Commission is concerned about the potential for carriers to provide shared operational services to their affiliates under fully-distributed cost (FDC) allocation procedures that do not include all of the associated costs. The affiliate transaction rules employ a higher of cost or market standard when applicable, or a FDC standard to ensure that all costs of services provided by a regulated telecommunications company are recovered from its affiliates. The general nature of the FDC allocation guidelines, however, allows carriers significant discretion in performing the FDC cost study. This discretion allows carriers to exclude expenses associated with providing shared functions to their non-regulated affiliates, especially to those affiliates that then sell retail broadband services to end users on an unregulated basis, thus recovering these costs from rate payers. The Commission seeks comment on clarifying or adopting new rules to ensure the proper application of the affiliate transaction rules in light of provision of retail broadband by affiliates in certain telecommunications markets.

32. Our accounting and high-cost universal service support rules rely on proper allocation of costs to work as intended. The Commission seeks comment on specific instances in which additional

rules or further clarification could minimize potential misallocations and thereby protect ratepayers of regulated services. Are there other methods that would help ensure proper allocation of costs between regulated and non-regulated services?

33. The Commission is also concerned that problems similar to those associated with regulated versus non-regulated allocations may arise in the application of the FDC process in connection with affiliate transactions. Section 32.27 of the Commission's rules requires an incumbent LEC to record assets or services received from its affiliated entities at the lesser of FDC or fair market value when no tariff rate, prevailing price, or publicly filed agreement exists. FDC may be over-inclusive, however, if it includes investment and expenses of the affiliate that would not properly be included in a carrier's revenue requirement or calculations for high-cost support. While the used and useful and prudent expenditure standards apply to costs included in affiliate transactions, the Commission seeks comment on whether they should adopt a rule that explicitly prohibits carriers from including in the FDC of an affiliate any costs that are disallowed from the regulated rate base or revenue requirement, or considered not to be used and useful or prudent expenditures. Without such a rule, carriers could shift costs to an affiliate and then effectively recover those disallowed costs through payments to the affiliate. The Commission invites parties to comment on how such an approach could be implemented, and whether there are circumstances under which these costs of affiliates should be properly included in the regulated rate base or costs used to calculate high-cost support.

34. The Commission seeks comment on whether additional data would assist in enforcement of the Commission's accounting and cost allocation rules, while minimizing ETC reporting burden.

c. Compliance Issues

35. Finally, the Commission seeks comment on the most effective way to ensure compliance with the proposed rules for universal service support and tariffing purposes. Rate-of-return affiliates of price cap carriers would be subject to any revised rules in establishing their tariffed rates for interstate services. In addition, if a price cap carrier is required to make a cost-based showing in the future, any expense rules adopted in this proceeding would apply to such showings. The Commission invites parties

to comment on whether they should require carriers to certify that they have not included any prohibited expenses in their cost submissions used to calculate high-cost support. If so, is there a current certification that can be modified to encompass this aspect, or is a new rule necessary? Because audit findings can be used to recover overpayments of high-cost support, the Commission also invites parties to comment on how the Commission should implement any requirements it may adopt. Are there other proposals or considerations that the Commission should consider to ensure compliance with any revised requirements?

36. Ensuring compliance with any revised investment, expense, or cost allocation rules in the tariffing context raises different challenges. Rate-of-return carrier tariffs must be filed in advance of their effective date, and pursuant to section 204 of the Act, the Commission, during the notice period, may suspend the effectiveness of a tariff and initiate an investigation to determine whether the tariff is just and reasonable. Section 204(a)(3) provides that local exchange carrier tariffs that take effect on 7-days notice after filing (when rates are reduced) or 15-days notice (for any other change) after filing are "deemed lawful" unless rejected or suspended and investigated by the Commission. If a tariff investigation has not been completed within five months of the tariff's specified effective date, the proposed tariff goes into effect subject to the results of the investigation. At the conclusion of the investigation, the Commission may prescribe rates prospectively and order refunds as necessary for any period in which the tariff was in effect. With these constraints on timing and prohibition on retroactive relief, the Commission invites parties to comment on steps the Commission could take to ensure that carriers follow these requirements. As a starting point, the Commission proposes to require a certification and seek comment on what it should entail. The Commission also invites parties to comment on what sanctions should be used to give some meaning to the certifications.

37. The Commission invites parties to comment on whether, and if so, when an exception to the "deemed lawful" provision of section 204 of the Act would apply where a carrier violated these rules. The Commission notes that in ACS v. FCC, the D.C. Circuit indicated that although the "deemed lawful" language is unambiguous, "[w]e do not, of course, address the case of a carrier that furtively employs

improper accounting techniques in a tariff filing, thereby concealing potential rate of return violations. The Order here makes no claim of such misconduct." The D.C. Circuit thus acknowledged that there may be extenuating circumstances (such as using improper accounting techniques or willfully misrepresenting expenses) that warrant an exception to the deemed lawful language. The Commission proposes to adopt a rule that would find an exception to the deemed lawful rule when a carrier incorrectly certifies that its revenue requirements are compliant with the applicable standards. The Commission invites parties to comment on this proposal. In particular, parties should address the amount of the discrepancy in actual and projected costs that must exist before such an exception would be invoked. The Commission also asks parties to comment on how any cost recovery should be returned to customers. For example, should it be used to reduce the revenue requirement for the following tariff period? Should there be an interest component to what must be returned to the customers. If so, what should the applicable interest rate be—the authorized rate of return, the corporate tax underpayment rate, or something else? Are there other mechanisms the Commission should consider to deter inclusion of inappropriate expenses in a rate-of-return carrier's revenue requirement?

38. The vast majority of rate-of-return carriers are members of the NECA pool, and their costs are combined to establish pool rates. The Commission invites parties to comment on NECA's role in enforcing these rules. Should carriers be barred from pool participation if determined to be including expenses prohibited by Commission rules? How should the magnitude of the violation be determined? What percent level of prohibited cost inclusion should be required before immediate expulsion from pool participation is deemed necessary? Are there any other metrics that should be considered in making this determination? Should carrier violations for inclusion of prohibited expenses have a "repeated occurrences" component, or should one time inclusion of a certain percentage of prohibited expenses impact pool participation?

B. Reducing Support in Competitive Areas

39. In section II.B of the concurrently adopted Report and Order, the Commission concludes that CAF BLS should not be provided in areas served by a qualifying unsubsidized competitor. The

Commission adopts several methods of disaggregating Connect America Fund Broadband Loop Support (CAF BLS) for areas found to be competitively service, and allow carriers to select which method will be used. USTelecom and NTCA propose that in addition to the methods they specifically presented, carriers should also have the option of disaggregating support based on a "method approved by the Commission." Here, the Commission invites commenters to propose other methods of disaggregation of support that can be implemented with minimal administrative burden for affected carriers and USAC. The Commission seeks to avoid complex allocations of the cost of facilities that that serve both competitive and non-competitive areas, which could be burdensome for rate-of-return carriers to implement.

40. The Commission also invites parties to comment on how the non-supported amount is to be recovered by the carrier, assuming such expenses remain regulated expenses for ratemaking purposes. At the outset, the Commission notes that rate-of-return carriers currently receive compensation for interstate loop costs through a combination of end-user charges, e.g., SLCs and universal service support. The SLCs most rate-of-return carriers assess are at the maximum levels. Thus, in many situations, carriers would be prohibited by our current rules from increasing SLC rates to recover investment and associated expenses that will not be supported under the high-cost program in competitive areas. The Commission invites parties to comment on the two approaches for recovery of those amounts.

41. First, the Commission could treat the non-supported expenses as being outside the tariffed regulated revenue requirement and allow carriers to assess a detariffed regulated rate to recover those non-supported costs. This would remove those costs from the NECA pooling process. The Commission invites parties to comment on whether the detariffed rates would be outside the prohibition on tariffing deaveraged rates in a study area, or whether a new rule should be adopted. The Commission invites parties to comment on this alternative. Does it present any opportunities for carriers to game the tariffing process?

42. A second option would be to raise the SLC caps for a particular study area to permit the recovery of the amounts not supported by the high-cost program. The Commission invites parties to comment on this alternative, including whether any SLC increases should be allowed only in the

competitive area or should apply to the entire study area. In the former case, a modification of the rule prohibiting deaveraging within the study area would need to be made. Parties should particularly address the effects of deaveraging on the NECA pooling and tariffing processes. The Commission also invites parties to comment on the effects of deaveraging on carriers' billing and operation support systems. Are there other alternatives that the Commission should consider for recovery of the non-supported investment and associated expenses?

C. Tribal Support

43. Discussion. Given the difficulties that some carriers have experienced in deploying basic telecommunications services on Tribal lands, the Commission recognizes the important role of universal service support to foster the deployment of broadband in unserved areas. Therefore, the Commission seeks comment on adopting rules to increase support to rate-of-return carriers for census blocks that include Tribal lands and unserved with broadband meeting the Commission's current requirements.

44. The Commission recognizes the distinct challenges in bringing communications services to Tribal lands and seek comment on how best to achieve broadband deployment on Tribal lands commensurate with that in other areas. However, the Commission has acknowledged that there are areas throughout the United States that are expensive to serve and that face challenges in demographics, weather, and geography.

45. NTTA proposes that a TBF be applied to any non-model-based rate-of-return mechanism that the Commission adopts. In light of the other changes adopted today, including measures to provide a larger capital investment allowance for carriers that are below average in terms of broadband deployment, and defined deployment obligations for all rate-of-return carriers, is there a need for a separate mechanism for Tribal lands? The Commission seeks comment on whether a multiplier applied to the revised ICLS (i.e. CAF BLS) mechanism would foster broadband deployment on Tribal lands and ensure "universal service funds are used for their intended purposes." Are there other approaches that would better advance of our goals?

46. If the Commission determines that a multiplier of support amounts under CAF BLS is an appropriate mechanism, what factor is appropriate? NTTA provides little support of why 1.25x is the appropriate factor to ensure broadband deployment on Tribal lands, other than pointing to the 25 percent credit the Commission provided in the Tribal Mobility Fund Phase I. The Commission seeks comment on the appropriate figure for the multiplier, if they were to adopt such an approach. When providing comment on the appropriate multiplier, specific data and figures are encouraged. The Commission also emphasizes that high-cost universal service support is a finite resource that must be equitably distributed in a manner that effectuates the goals of section 254. Therefore, the Commission seeks comment on how implementation of Tribal-specific additional support may affect the resources available to extend broadband deployment to non-Tribal rate-of-return service areas with equally minimal broadband build out and located in geographies as equally hard to serve as Tribal lands.

47. The Commission also seeks comment on how best to target Tribal land-specific support to Tribal lands most in need of broadband deployment. NTTA recommends offering TBF support to all rate-of-return carriers serving Tribal lands and limiting the applicability of the TBF to specific census blocks that include Tribal lands. As noted above, broadband deployment differs substantially among Tribal lands. In light of this, should all Tribal lands be eligible for additional support, or only those with lower levels of deployment? Above, the Commission adopts a mechanism to allow a larger allowable loop expenditure for carriers below the average and to limit the allowable loop expenditure for those above the average. The Commission notes that the weighted average nationwide for rate-of-return carrier deployment of 10/1 Mbps service is currently 68 percent. Should Tribal-specific support only be provided to those rate-of-return carriers that are serving Tribal lands that report broadband deployment lower than the weighted average, based on Form 477 data? If so, should eligibility for Tribal-specific support be determined annually or on a less frequent basis? Should it be provided for a specified period of time, and if so, what is the appropriate time period?

48. If a rate-of-return carrier's study area is mostly non-Tribal, should that carrier be eligible to receive additional Tribal-specific support? Should there be some threshold percentage, for example 50

percent, of a carrier's service area is on Tribal lands in order to qualify for additional Tribal-specific support? The Commission also seeks comment on the appropriate data source to use to determine whether a census block contains Tribal lands. For example, should the Commission utilize maps and data distributed by the U.S. Census Bureau, or would maps and data provided by the Bureau of Indian Affairs be more appropriate? What other sources of data might the Commission use? The Commission notes that the Commission is currently engaged in consultation with the Tribal Nations of Oklahoma on the operational functionality and use of the Oklahoma Historical Map at the local and individual Tribal Nation level as part of the Lifeline rulemaking proceeding. The Commission seeks comment on how this process may affect our determination of which census blocks would be eligible for Tribal-specific support.

49. In addition, the Commission seeks comment on what specific broadband deployment obligations should be established, if they were to adopt a mechanism to provide additional support on Tribal lands that lag behind. NTTA supports tying build-out obligations to additional support, and proposes specific build-out obligations tied to a sliding scale based on current broadband deployment levels to "meaningfully improve broadband connectivity on Tribal lands … particularly in areas that are unserved today." For instance, it proposes that recipients of TBF that currently have deployed 10/1 Mbps to less than 10 percent of their locations be required to provide 4/1 Mbps service to at least 25 percent of their locations within three years, and 10/1 Mbps to at least 10 percent of locations, within three years; for those that already have deployed 10/1 Mbps to at least 10 percent but not 25 percent of their locations, they would be required to offer 4/1 Mbps service to 50 percent of their locations and 10/1 Mbps service to 25 percent of locations within three years. If the Commission were to adopt some form of additional Tribal-specific support, how should these proposals be harmonized with the mandatory deployment obligations they adopt above for all rate-of-return carriers?

50. NTTA recommends that participation in the TBF be voluntary. The Commission seeks comment on whether carriers should have the option to decline Tribal-specific support if the Commission determines that the provision of additional support to Tribal lands is necessary to close the broadband

deployment gap in such areas. NTTA suggests that if acceptance of Tribal-specific support is conditioned on build-out obligations, such support presents a "unique opportunity to promote greater deployment of broadband to Tribal lands." Should participation in such a program be mandatory?

51. In the USF/ICC Transformation Order, 76 FR 73830, November 29, 2011, the Commission required that ETCs serving Tribal lands must meaningfully engage with Tribal governments in their supported areas. The Commission seeks comment on whether the offer of additional voluntary Tribal-specific support would encourage more robust ETC engagement by carriers with Tribal governments on whose lands they provide service.

52. Finally, the Commission asks whether carriers that serve Tribal lands, in whole or in part, should not be subject to the measures to limit operating expenses and the overall budget control mechanism concurrently adopted in the Report and Order. Parties have noted, for instance, that Tribal lands may pose unique challenges for obtaining permitting and other authorizations. If the Commission were to exempt such providers from those opex and overall budget limitations, how should they determine the providers subject to such limitations? For instance, to be eligible for such an exemption, should 50 percent or more of the carrier's study area be Tribal lands? What would the budgetary impact be on other rate-of-return carriers that remain on legacy support mechanisms if the Commission were to adopt such exemptions?

D. Other Measures to Improve the Operation of the Current Rate-of-Return System

53. Some companies have informed us they have been unable to extend broadband despite their sincere desire to do so due to lack of access to capital. Some companies have seen declining support under the existing legacy mechanisms, and others are not eligible for high cost loop support (HCLS) support due to the prior "race to the top" that the Commission took steps to address in December 2014.

54. In the April 2014 Connect America Fund FNPRM, the Commission questioned the long term viability of HCLS and ICLS in their current form; that is why they encouraged stakeholders to focus on creating a Connect America Fund for cost recovery that would be consistent with our core principles for reform. As noted in the concurrently adopted Report and Order, the Commission expect the voluntary

path to the model to be an attractive option for some of the carriers that no longer receive HCLS. Moreover, our reforms to the existing interstate common line support (ICLS) mechanism will enable carriers that are, relatively speaking, lower cost than some of their peers to obtain more high-cost support for broadband only lines from CAF BLS than they would have received for voice-broadband lines under the existing HCLS mechanism. This may provide an incentive for them to migrate customers to broadband-only lines.

55. The Commission intends to monitor the impact of these reforms over time. The Commission are optimistic that together, these two paths will provide sufficient options for carriers to make a business case to extend broadband service where it is lacking, while minimizing disruption for those carriers that prefer to remain under the reformed legacy mechanisms. The Commission invites commenters to submit into the record any other proposals or ideas for steps the Commission should take to provide appropriate incentives for broadband deployment to unserved areas working within the framework of the existing budget for rate-of-return areas.

56. As the Commission evaluates ways to improve the overall framework governing rate-of-return carriers, they also believe it is appropriate to ensure that the administration of the current rate-of-return system, a function largely performed by NECA, is as efficient as possible to ensure that the costs of administration, ultimately borne by consumers, are reasonable. The role of NECA has changed over the last few decades due to a number of factors, including market changes, significant regulatory reforms, and the creation of USAC as the Administrator for the federal universal service mechanisms. The Commission asks parties to address whether and how the Commission should amend subpart G of Part 69 to reflect these changes. The Commission also seeks comment on whether they should adopt rule changes to facilitate transparency into and evaluation of whether NECA's functions are accomplished in an efficient, cost effective, and neutral manner.

E. Streamlining ETC Annual Reporting Requirements

57. In addition to the modifications to ETC annual reporting obligations adopted above, the Commission seeks comment on certain, narrowly-tailored reporting changes to improve the

Commission's ability to protect against waste, fraud, and abuse. The Commission also seeks comment on additional ways to lessen regulatory reporting burdens on ETCs, particularly those that are small businesses.

58. Here, the Commission seeks comment on whether to modify or eliminate five sets of requirements: specifically, the requirements by ETCs to provide outage information, unfulfilled service requests, the number of complaints per 1,000 subscribers for both voice and broadband service, pricing for both voice and broadband, and certification that it is complying with applicable service quality standards. What are the regulatory costs associated with requiring such information to be included in the annual Form 481, particularly for those categories of information that may be collected in some fashion through other means (the Commission's outage reporting system and consumer complaint system)? In the case of outage reporting, the Commission notes that all carriers are under a separate obligation to report outages under part 4 of our rules. Are the ETC-specific rules therefore duplicative, and can other means of collection be improved?

59. To the extent commenters believe such information should continue to be collected from ETCs, the Commission asks for specific suggestions on how to modify these requirements so that the information is more useful to analyze, both on an individual ETC and aggregate basis.

60. The underlying purpose of the unfulfilled service request reporting rule was to monitor rate-of-return carriers' progress in deploying broadband pursuant to the reasonable request standard. The Commission has concerns, however, that the rule, as implemented, is not adequately advancing that purpose. Similarly, the Commission has found the information regarding complaints to be of limited value, in large part because it is not clear that ETCs are reporting such information in a consistent fashion. If the Commission were to retain some form of reporting requirements for complaints and unfulfilled requests, should they implement more specific standardized instructions regarding the reporting of complaints and unfulfilled requests so that the information can be analyzed and aggregated in a more useful fashion? For the reporting of pricing information, would it be less burdensome if ETCs were to

report only the price offering that meets or exceeds our minimum requirements, and not the full range of service offerings?

61. The Commission also seeks comment on whether, in light of our experience with the reporting requirements to date, they should modify or eliminate the requirement that an ETC certify it is complying with applicable service quality standards and consumer protection rules. Absent greater specificity, affected ETCs may not know what standards and rules are "applicable." Should the Commission clarify that the obligation applies only to legally binding rules and/or voluntary guidelines with which the ETC has agreed to comply? If so, how should the ETC report its compliance? Are other clarifications or modifications to the rule appropriate?

62. Above the Commission directs USAC to establish an online tool to permit access to all information submitted by ETCs, including Form 481 data. USAC shall ensure that state regulators, and Tribal governments where applicable, will have access full Form 481 data filings, including any data marked confidential. In light of that change, the Commission proposes to eliminate ETCs' requirement to file a duplicate copy of Form 481 with states and/or Tribal governments. Instead, they would make a single filing with USAC, and both the Commission and other regulators would obtain the information through online access. The Commission tentatively concludes that centralizing all filing requirements with USAC would be beneficial for states and Tribal governments as it would reduce the need to sort through, in some cases, dozens of paper documents containing the same information that would be available more readily through an online tool. Interested parties have suggested that the Commission should reduce or eliminate duplicate filings of the same information. Having one place for ETCs to file their annual reports, instead of three or more, may reduce the filing burden on ETCs. The Commission seeks comment on this tentative conclusion.

63. Lastly, the Commission seeks comment on modifying or eliminating any other reporting requirements applicable to all ETCs that have broadband obligations as a condition of receiving high-cost support in order to further improve the alignment of carriers' obligations with our ability to monitor them through our reporting requirements.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

64. This document contains new information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, infra.

B. Initial Regulatory Flexibility Analysis

65. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Further Notice of Proposed Rulemaking. The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided on Further Notice of Proposed Rulemaking and the concurrently adopted Report and Order, Order and Order on Reconsideration. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.

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

66. In the Further Notice, the Commission commences a review of the extent to which certain investments and expenses incurred by a rate-of-return regulated local exchange carrier may be included in its rate base and revenue requirement for ratemaking and USF purposes. The Commission

notes that there may be very limited circumstances where our proposed reforms would impact price cap regulated carriers' use of high-cost USF support. The Commission has not comprehensively reviewed the continued reasonableness of its existing rules regarding permissible investments and expenses for regulated local exchange carriers since the passage of the Telecommunications Act of 1996. Market and regulatory conditions have changed substantially since that time. Regulated telecommunications carriers have expanded into the provision of retail broadband services, either directly or through affiliated entities. Regulated carriers also increasingly face competition, for both voice and broadband services, in portions of their incumbent territory from other facilities-based providers, such as cable and wireless providers. These changing conditions may affect the incentives regarding the types of costs carriers attempt to include in their revenue requirement and the ways in which carriers allocate costs between regulated and non-regulated services and affiliates.

67. Through audits, inquiries, and other investigations, the Commission has recently become aware of alleged abuses by rate-of-return carriers of the used and useful principles and its cost allocation rules. The Commission therefore concluded that it is time to reevaluate the types of expenses that should be permitted—both in a carrier's revenue requirement and for recovery through high-cost support. Looking into the expenses permitted and the allocation of those expenses will help ensure that carriers are only recovering costs that are used and useful and prudently incurred, and in the case of high cost support, only costs that are necessary to the provision of interstate telecommunications services.

68. In the concurrently adopted Order, the Commission determined that universal service support should be targeted more specifically to those areas where support is most needed to ensure consumers are served with voice and broadband service. Therefore, the Commission adopted a process for identifying those areas served by an unsubsidized competitor and several methods of disaggregating support to those areas. However, the Commission seeks comment on other methods for disaggregating support that would be minimally burdensome on carriers and how the non-supported amount should be recovered.

69. The Commission recognizes that Tribal lands may need additional financial support to ensure the availability of broadband in these areas. Therefore, the Further Notice seeks comment on whether a separate mechanism is needed to support broadband in Tribal lands and, if so, how such a mechanism should be structured.

70. Some companies have informed the Commission that they are unable to extend broadband due to a lack of access to capital. Other carriers have seen declining support or are ineligible for certain types of support, such as HCLS. In the concurrently adopted Order, the Commission has adopted reforms to its high-cost universal service support to support broadband deployment. The Further Notice seeks comment on other proposals to expand broadband services in those areas served by rate-of-return carriers and any changes needed to make the administration of federal universal service programs more efficient.

71. The Commission also seeks to modify its ETC annual reporting obligations to improve the Commission's ability to protect against waste, fraud, and abuse. The Further Notice seeks comment on how best to make the information collected more useful while minimizing the burdens on those carriers subject to these reporting requirements.

2. Review of Permitted Expenses

72. The Further Notice begins by reevaluating a rate-of-return carrier's ability to include certain types of expenses in its revenue requirement and high-cost support with consideration of the appropriate standard to be applied. The Commission believes that the terms "used and useful," "prudent expenditure," and "necessary to the provision of" should be read consistently to describe those expenses that a carrier may appropriately include in its interstate rate base, interstate revenue requirement, and cost studies used to calculate high-cost support. The costs should include amounts of long-term investment and current expenditures that a business would reasonably incur to provide telecommunications services, taking into account current and reasonably forecasted operating conditions and business levels. Accordingly, the Commission seeks comment on a variety of expenses, and whether such expenses should be included when making these calculations.

3. Issues Related to Cost Allocation and Affiliate Transactions

73. Rate-of-return carriers are subject to the Commission's longstanding Part 64 rules regarding the allocation of costs between regulated and non-regulated activities and to the affiliate transaction rules in Part 32. Under these rules, carriers currently apply broad principles in making such allocations, and the lack of specificity in the rules gives carriers a degree of discretion in making these allocation decisions. Carriers have an incentive to interpret the allocation rules in order to allocate as many costs as possible to their regulated activities, both to justify a higher interstate revenue requirement and to receive additional high-cost support. Given the lack of specific guidance, the additional costs associated with the provision of retail broadband services, and the incentive to allocate costs to regulated activities, the Commission concludes that it is time to revisit the allocation rules to provide greater clarity to rate-of-return carriers regarding how to determine the relative allocation of costs between regulated and non-regulated activities and affiliates. The Commission seeks comment on adopting new rules to improve the process of allocating costs among regulated and non-regulated services and among affiliates, and also seeks comment regarding how to detect cases of misallocation.

4. Compliance Issues

74. Additionally, the Commission seeks comment on the most effective way to ensure compliance with the proposed rules for universal service support and tariffing purposes. For example, the Commission seeks comment on what, if any, certification or reporting requirements should be implemented.

5. Reducing Support in Competitive Areas

75. In the Further Notice, the Commission seeks comment on alternative methods of reducing support for areas served by an unsubsidized competitor. In the concurrently adopted Order, the Commission adopts several methods of disaggregating CAF BLS for areas found to be competitively served and allow carriers to select which method will be used. However, the Commission invites commenters to propose other methods of disaggregation of support that can be implemented with minimal administrative burden for affected carriers and USAC. The Commission seeks to avoid complex

allocations of the cost of facilities that serve both competitive and non-competitive areas, which could be burdensome for rate-of-return carriers to implement.

76. The Commission also invites parties to comment on how the non-supported amount is to be recovered by the carrier, assuming such expenses remain regulated expenses for ratemaking purposes. The Commission notes that rate-of-return carriers currently receive compensation for interstate loop costs through a combination of end-user charges, e.g., SLCs, and universal service support. The SLCs most rate-of-return carriers assess are at the maximum levels. Thus, in many situations, carriers would be prohibited by our current rules from increasing SLC rates to recover investment and associated expenses that will not be supported under the high-cost program in competitive areas. Therefore, the Commission invites parties to comment on two approaches for recovery of those amounts.

6. Tribal Support

77. In the Further Notice, the Commission seeks comment on a proposal to adopt a mechanism to provide additional support to unserved Tribal lands, and alternative approaches. The Commission has observed that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population, and that greater financial support therefore may be needed in order to ensure the availability of broadband on Tribal lands. Therefore, the Commission seeks comment on adopting rules to increase support to rate-of-return carriers for census blocks that include Tribal lands and are unserved with broadband meeting the Commission's current requirements. The Commission also recognizes that broadband deployment differs substantially among Tribal lands. To assist small rate-of-return carriers that serve Tribal areas with minimal infrastructure build out, the Commission also seeks comment on how best to target Tribal land-specific support to Tribal areas most in need of broadband deployment.

7. Other Measures To Improve the Operation of the Current Rate-of-Return System

78. Additionally, in the Further Notice, the Commission invites commenters to submit into the record any other proposals or ideas for steps the Commission should take to provide appropriate

incentives for broadband deployment to unserved areas working within the framework of the existing budget for rate-of-return areas. Some companies have indicated they have been unable to extend broadband despite their sincere desire to do so due to lack of access to capital, while other companies have seen declining support under the existing legacy mechanisms. Dome carriers are not eligible for HCLS support due to the prior "race to the top" that the Commission took steps to address in December 2014. The Commission expects our reforms to the existing ICLS mechanism and addition of a voluntary path to the model will provide options for carriers to extend broadband where it is lacking. While the Commission intends to monitor the impact of these reforms over time, they invite commenters to submit into the record any other proposals or ideas for steps the Commission should take to provide appropriate incentives for broadband deployment to unserved areas while minimizing disruption for those carriers that prefer to remain under the reformed legacy mechanisms.

8. Streamlining ETC Annual Reporting Requirements

79. Lastly, with respect to ETC reporting requirements, the Commission seeks comment on additional ways to lessen regulatory reporting burdens on ETCs, particularly those that are small businesses. In the concurrently adopted Order, the Commission updates our annual reporting requirements for rate-of-return ETCs as a necessary component of our ongoing efforts to update the support mechanisms for such ETCs to reflect our dual objectives of supporting existing voice and broadband service, while extending broadband to those areas of the country where it is lacking. To further lessen the regulatory burden on ETCs, many of whom are small rate-of-return carriers, and to improve on the Commission's ability to protect against waste, fraud, and abuse, the Commission seeks comment on certain, narrowly-tailored reporting changes. Specifically, the Commission seeks comment on whether to modify or eliminate five sets of requirements: the requirements to provide outage information, unfulfilled service requests, the number of complaints per 1,000 subscribers for both voice and broadband service, pricing for both voice and broadband, and certification of compliance with applicable service quality standards.

9. Legal Basis

80. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.3, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.3, 1.421, 1.427, and 1.429.

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

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

11. Total Small Entities

82. Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there

were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 89,327 entities may qualify as "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

12. Broadband Internet Access Service Providers

83. The rules adopted in the concurrently adopted Order apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled "broadband." The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $32.5 million or less. These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. For the second category, the data show that 2,383 firms operated for the entire year. Of those, 2,346 had annual receipts below $32.5 million per year. Consequently, the Commission estimates that the majority of broadband Internet access service provider firms are small entities.

84. 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 FRFA describes the universe of small entities that our action might affect, the Commission discusses in turn several different types of entities that might be providing broadband Internet access service. The Commission notes that, although they have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, they include these entities in our Final Regulatory Flexibility Analysis.

13. Wireline Providers

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

86. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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 and 186 have more than 1,500 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. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by rules adopted pursuant to the concurrently adopted Order.

87. The Commission has 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." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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

89. 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. 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. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the concurrently adopted Order.

90. 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. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193

have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the concurrently adopted Order.

91. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the concurrently adopted Order.

92. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the concurrently adopted Order.

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

94. 800 and 800-Like Service Subscribers. 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. 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. 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. The Commission does 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, the Commission estimates 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.

14. Wireless Providers – Fixed and Mobile

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

96. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior

categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, the Commission estimates that the vast majority of wireless firms are small.

97. 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. The SBA has approved these definitions.

98. 218-219 MHz Service. The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the 218-219 MHz Report and Order and Memorandum Opinion and Order, 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218-219 MHz spectrum.

99. 2.3 GHz Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for

the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

100. 1670–1675 MHz Services. This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

101. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

102. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block

auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

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

104. Specialized Mobile Radio Licenses. The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38

geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

105. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

106. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. The Commission assumes, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

107. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for

Metropolitan/Rural Service Area (MSA/RSA) licenses—"entrepreneur"—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

108. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order, 72 FR 48814, August 24, 2007. An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

109. Upper 700 MHz Band Licenses. In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in

the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

110. 700 MHz Guard Band Licensees. In 2000, in the 700 MHz Guard Band Order, 65 FR 17594, April 4, 2000, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

111. Cellular Radiotelephone Service. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

112. Private Land Mobile Radio ("PLMR"). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining

whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

113. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

114. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

115. Air-Ground Radiotelephone Service. The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small

business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

116. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross

revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the concurrently adopted Order.

117. Advanced Wireless Services (AWS) (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)). For the AWS-1 bands, the Commission has defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS-2 and AWS-3, although the Commission does not know for certain which entities are likely to apply for these frequencies, they note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

118. 3650–3700 MHz band. In March 2005, the Commission released a Report and Order and Memorandum Opinion and Order that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

119. Fixed Microwave Services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint

Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

120. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

121. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the concurrently adopted Order.

122. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

123. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross

revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

124. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

125. Narrowband Personal Communications Services. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order, 65 FR 35843, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

126. Paging (Private and Common Carrier). In the Paging Third Report and Order, 64 FR 33762, June 24, 1999,the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March

2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

127. 220 MHz Radio Service – Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the concurrently adopted Order.

128. 220 MHz Radio Service – Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the 220 MHz Third Report and Order, 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not

exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

15. Satellite Service Providers

129. Satellite Telecommunications Providers. Two economic census categories address the satellite industry. The first category has a small business size standard of $30 million or less in average annual receipts, under SBA rules. The second has a size standard of $30 million or less in annual receipts.

130. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2007 show that there were a total of 570 firms that operated for the entire year. Of this total, 530 firms had annual receipts of under $30 million, and 40 firms had receipts of over $30 million. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

131. The second category of Other Telecommunications comprises, inter alia, "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2007 show that

there were a total of 1,274 firms that operated for the entire year. Of this total, 1,252 had annual receipts below $25 million per year. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

16. Cable Service Providers

132. Because section 706 requires us to monitor the deployment of broadband using any technology, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

133. Cable and Other Program Distributors. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 2,048 firms in this category that operated for the entire year. Of this total, 1,393 firms had annual receipts of under $10 million, and 655 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small.

134. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators are

small under the 400,000 subscriber size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, the Commission estimates that most cable systems are small entities.

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

136. The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this second

size standard, most cable systems are small and may be affected by rules adopted pursuant to the concurrently adopted Order. In addition, the Commission notes that they have certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

17. Electric Power Generators, Transmitters, and Distributors

137. 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." 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." Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees. Based on this data, a majority of these firms can be considered small.

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

138. Permitted Expenses. In the Further Notice, when reviewing permitted expenses, the Commission seeks comment on whether it should require rate-of-return carriers to identify their cost consultants, if any, in their FCC Form 481s.

139. Cost Allocation and Affiliate Transactions. The Commission seeks comment on adopting a rule that would classify certain costs, such as general and administrative expenses, as common costs for purposes of applying the Part 64 and affiliate transaction rules when an entity provides broadband services directly, or through an affiliated entity. Additionally, the Commission asks whether it should clarify or adopt new rules to ensure the proper application of the affiliate transaction rules in light of the provision of retail broadband by affiliates in certain telecommunications markets. More generally, the Commission seeks comment on instances in which additional rules or further clarification could minimize potential misallocations and thereby protect ratepayers of regulated services. While the Commission notes that the used and useful and prudent expenditure standards apply to costs included in affiliate transactions, it seeks comment on whether it should adopt a rule that explicitly prohibits carriers from including in the fully distributed cost of an affiliate any costs that are disallowed from the regulated rate base or revenue requirement, or considered not to be used and useful or prudent expenditures. Finally, the Commission seeks comment on whether additional data would assist in enforcement of the Commission's accounting and cost allocation rules, while minimizing ETC reporting burden, and if so, what kind of reporting requirements should be implemented.

140. Compliance. To ensure compliance with the proposed rules for universal service support and tariffing purposes, the Commission invites parties to comment on whether carriers should be required to certify that they have not included any prohibited expenses in their cost submissions used to calculate high-cost support. Additionally, the Commission asked parties to comment on NECA's role in enforcing these rules, and whether carriers should be subject to any additional reporting requirements.

141. Reducing Support in Competitive Areas. In the Further Notice, the Commission also seeks comment on methods of disaggregation of support that can be implemented with minimal administrative burden for affected carriers and USAC. The Commission seeks to avoid complex allocations of the cost of facilities that that serve both competitive and non-competitive areas, which could be burdensome for rate-of-return carriers to implement.

142. Additionally, the Commission asks how the non-supported amount is to be recovered by the carrier, assuming such expenses remain regulated expenses for ratemaking purposes. Specifically, the Commission invites parties to comment on two approaches for recovery of those amounts. First, the Commission could treat the non-supported expenses as being outside the tariffed regulated revenue requirement and allow carriers to assess a detariffed regulated rate to recover those non-supported costs. This would remove those costs from the NECA pooling process. The Commission invites parties to comment on whether the detariffed rates would be outside the prohibition on tariffing deaveraged rates in a study area, or whether a new rule should be adopted. A second option would be to raise the SLC caps for a particular study area to permit the recovery of the amounts not supported by the high-cost program. The Commission invites parties to comment on this alternative, including whether any SLC increases should be allowed only in the competitive area or should apply to the entire study area. Either of these alternatives would create new compliance requirements that could create administrative burdens for small rate-of-return carriers.

143. Tribal Support. The Commission seeks comment on adopting rules to increase support to rate-of-return carriers for census blocks that include Tribal lands and unserved with broadband meeting the Commission's current requirements. As part of this line of questioning, the Commission asks how to how best to target Tribal land-specific support to Tribal areas most in need of broadband deployment, which may require filing on behalf of Tribal entities. Additionally, the Commission seeks comment on what specific broadband deployment obligations should be established, if the Commission were to adopt a mechanism to provide additional support on Tribal lands. Identification of specific areas to deploy and the associated deployment obligations could place an administrative and resource burden on small rate-of-return carriers serving Tribal lands.

144. Other Measures To Improve the Operation of the Current Rate-of-Return System. The Commission invites commenters to submit into the record any other proposals or ideas for steps the Commission should take to provide appropriate incentives for broadband deployment to unserved areas working within the framework of the existing budget for rate-of-return areas. This line of questioning by

the Commission is intended to gather new ideas or proposals for further consideration. Therefore, the Commission does not foresee any major burdens being placed on carriers as a result of this portion of the Further Notice.

145. Streamlining ETC Annual Reporting Requirements. Lastly, the Commission seeks comment on whether to modify or eliminate five sets of requirements for ETCS to provide: outage information, unfulfilled service requests, the number of complaints per 1,000 subscribers for both voice and broadband service, pricing for both voice and broadband, and certification that they are complying with applicable service quality standards. Elimination of these ETC reporting requirements would relieve the administrative burden on small rate-of-return carriers.

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

146. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission expects to consider all of these factors when they have received substantive comment from the public and potentially affected entities.

147. With respect to the costs of implementing the proposals to restrict permitted expenses, the Commission seeks comment on the least costly means of implementing any revisions, which would minimize burdens on carriers. The Commission notes that many of the proposals with respect to cost allocation would most likely change the way cost allocation is completed, but would not necessarily be any more burdensome. The proposal of identifying cost consultants would add a minimal burden on small entities if adopted because carriers should typically utilize cost consultants to submit information to NECA for purposes of pooling.

148. In discussing potential compliance procedures, the Commission asks whether there is a current certification that can be modified to encompass a certification that only permitted expenses are included. This methodology seeks to reduce the burden on smaller entities by making a small change instead of creating a new, more involved compliance mechanism.

149. In the concurrently adopted Order, the Commission adopts several methods of disaggregating CAF BLS for areas found to be competitively served and allow carriers to select which method will be used. However, in seeking comment on other methods of disaggregation of support that can be implemented with minimal administrative burden for affected carriers and USAC, the Commission takes further steps to reduce administrative and resource burdens on small rate-of-return carriers. The Commission seeks to avoid complex allocations of the cost of facilities that that serve both competitive and non-competitive areas, which could be burdensome for rate-of-return carriers to implement.

150. The Commission also invites parties to comment on how the non-supported amount is to be recovered by the carrier, assuming such expenses remain regulated expenses for ratemaking purposes. The Commission invites parties to comment on the two approaches for recovery of those amounts. The Commission seeks to minimize administrative burden under any approach.

151. The Commission also invites commenters to submit into the record any other proposals or ideas for steps the Commission should take to provide appropriate incentives for broadband deployment to unserved areas working within the framework of the existing budget for rate-of-return areas. The Commission is cognizant of the many compliance burdens small rate-of-return carriers face and seeks to minimize these burdens overall with this line of questioning.

152. In the concurrently adopted Order, the Commission updates our annual reporting requirements for rate-of-return ETCs as a necessary component of our ongoing efforts to update the support mechanisms for such ETCs to reflect our dual objectives of supporting existing voice and broadband service, while extending broadband to those areas of the country where it is lacking. To further lessen the regulatory burden on small rate-of-return carriers, and to improve on the Commission's ability to protect against waste, fraud, and abuse they Commission seeks comment on certain, narrowly-

tailored reporting changes. Specifically, the sets of requirements the Commission seeks comment on whether to modify or eliminate would reduce rate-of-returns ETCs' compliance burden.

153. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Further Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

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

154. None.

C. Congressional Review Act

155. The Commission will send a copy of the concurrently adopted Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

D. Ex Parte Presentations

156. Permit-But-Disclose. The proceeding this Second FNPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or

arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

E. Comment Filing Procedures

157. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

  Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand

deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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

158. 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).

159. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the FNPRM in order to facilitate our internal review process.

160. Additional Information. For additional information on this proceeding, contact Suzanne Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, Suzanne.Yelen@fcc.gov, (202) 418-7400 or Alexander Minard of the Wireline Competition Bureau, Technology Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400.

IV. ORDERING CLAUSES

161. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.3, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.3, 1.421, 1.427, and 1.429, that this

Further Notice of Proposed Rulemaking and the concurrently adopted Report and Order, Order and Order on Reconsideration IS ADOPTED,. It is our intention in adopting these rules that if any of the rules that the Commission retains, modifies, or adopts herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

162. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.3, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.3, 1.421, 1.427, and 1.429, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

163. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Further Notice of Proposed Rulemaking and the concurrently adopted Report and Order, Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

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

List of Subjects in 47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 65 as follows:

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

2. Amend §65.450 by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 65.450 Net income.

* * * * *

(d) Except for the allowance for funds used during construction and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Account 7300 and 7400) and interest and related items (Account 7500) and extraordinary items (Account 7600) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

(e) For purposes of determining whether an expense is recognized by the Commission as "necessary to the provision of these services" under paragraph (a) of this section, the expense must be used and useful and a prudent expenditure. The Commission specifically provides that the following expenses are not necessary to the provision of interstate telecommunications services regulated by the Commission:

(1) Personal travel; gifts to employees; childcare; housing allowances or other forms of mortgage or rent assistance for employees; personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the incumbent LEC, including but not limited to personal expenses for housing, such as rent or mortgages; personal use of company-owned housing, buildings, or facilities used for entertainment purposes by employees, board members, family members of employees and board

members, contractors, or any other individuals affiliated with the incumbent local exchange carrier;

(2) Entertainment; artwork and other objects which possess aesthetic value; tangible property not logically related or necessary to the offering of voice or broadband services;

(3) Aircraft, watercraft, and other motor vehicles designed for off-road use, except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads; any vehicles provided to employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the incumbent local exchange carrier for personal use;

(4) Cafeterias and dining facilities; alcohol and food, including but not limited to meals to celebrate personal events, such as weddings, births, or retirements, except that a reasonable amount for food shall be allowed for work-related travel;

(5) Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships of conferences or community events; and

(6) Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

3. Add paragraph (d) to §65.830 to read as follows:

§ 65.830 Deducted items.

* * * * *

(d) The following assets shall also be deducted from the interstate rate base:

(1) Artwork and other objects which possess aesthetic value;

(2) Tangible property not logically related or necessary to the offering of voice or broadband services;

(3) Personal residences and property used for entertainment purposes;

(4) Aircraft, watercraft, and other motor vehicles designed for off-road use, except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads;

(5) Any vehicles provided to employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the incumbent local exchange carrier for personal use; and

(6) Cafeterias and dining facilities.

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