authority to perform all functions of the Bureau described in § 0.191 of the Commission's rules. Further, the action we take in this Order is consistent with § 4.11 of the Commission's rules, which states that when outage reports cannot be submitted electronically using the Commission-approved Web-based system, written reports should be filed and all hand-delivered outage reports should be addressed to the Federal Communications Commission, The Office of Secretary, Attention: Chief, Public Safety & Homeland Security Bureau. 47 CFR 4.11.

4. Authority for the adoption of the foregoing revisions is contained in sections 1, 4(i), 4(j), 5(b), 5(c), 201(b) and 303(r) of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i), 154(j), 155(b), 155(c), 201(b) and 303(r).

5. The adopted amendments pertain to agency organization, procedure and practice. Consequently, the notice and comment provisions of the Administrative Procedure Act contained in 5 U.S.C. 553(b) are inapplicable.

6. Accordingly, the Commission ordered that part 0 of the Commission Rules, set forth in Title 47 of the Code of Federal Regulations, be amended to delegate authority to the Public Safety and Homeland Security Bureau to administer part 4 of the Commission's rules, which pertain to disruptions to communications.

List of Subjects in 47 CFR Part 0

Organizations and functions (Government agencies).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends part 0 of Title 47 of the Code of Federal Regulations as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.31 is amended by revising paragraph (i) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(i) To administer parts 2, 5, 15, and 18 of this chapter, including licensing, recordkeeping, and rule making.

* * * * *

■ 3. Section 0.191 is amended by revising paragraph (g) to read as follows:

§ 0.191 Functions of the Bureau.

* * * * *

(g) Conducts studies of public safety, homeland security, national security, emergency management and preparedness, disaster management, and related issues. Develops and administers recordkeeping and reporting requirements for communications companies pertaining to these issues. Administers any Commission information collection requirements pertaining to public safety, homeland security, national security, emergency management and preparedness, disaster management, and related issues, including the communications disruption reporting requirements set forth in part 4 of this chapter and revision of the filing system and template used for the submission of those communications disruption reports.

* * * * *

■ 4. Section 0.241 is amended by revising paragraph (a)(1), removing paragraph (d), and redesignating paragraphs (e) through (i) as (d) through (h) to read as follows:

§ 0.241 Authority delegated.

* * * * *

(a) * * *

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes.

* * * * *

■ 5. Section 0.392 is amended by adding new paragraph (i) to read as follows:

§ 0.392 Authority delegated.

* * * * *

(i) The Chief of the Public Safety and Homeland Security Bureau is delegated authority to administer the communications disruption reporting requirements contained in part 4 of this chapter and to revise the filing system and template used for the submission of such communications disruption reports.

[FR Doc. E8–3135 Filed 2–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 04–36, CC Docket Nos. 95–116, 99–200; FCC 07–188]

IP-Enabled Services, Telephone Number Portability, Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted rules extending local number portability obligations and numbering administration support obligations to interconnected VoIP services and responded to the District of Columbia Circuit Court of Appeals stay of the Commission's *Intermodal Number Portability Order*.

DATES: Effective March 24, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Melissa Kirkel, Wireline Competition Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: In this Order, the Commission undertakes several steps to help ensure that consumers and competition benefit from local number portability (LNP) as intended by the Communications Act of 1934, as amended (the Act) and Commission precedent. First, the Commission extends LNP obligations and numbering administration support obligations to encompass interconnected VoIP services. Second, the Commission issues a Final Regulatory Flexibility Analysis (FRFA) in response to the D.C. Circuit's stay of the Commission's *Intermodal Number Portability Order*. The Commission finds that wireline carriers qualifying as small entities under the Regulatory Flexibility Act (RFA) should be required to port to wireless carriers where the requesting wireless carrier's ''coverage area'' overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.

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

Final Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis of Report and Order

1. On March 10, 2004, the Commission initiated a proceeding to examine issues relating to Internet Protocol (IP)-enabled services—services and applications making use of IP, including, but not limited to, VoIP services. In the *IP-Enabled Services Notice* (69 FR 16193, Mar. 29, 2004), the Commission sought comment on, among other things, whether to extend the obligation to provide LNP to any class of IP-enabled service provider. The Commission also sought comment on whether the Commission should take any action to facilitate the growth of IP-enabled services, while at the same time maximizing the use and life of the North American Numbering Plan (NANP) numbering resources.

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

A. Scope

3. Consistent with the Commission's previous decisions in the *IP-Enabled Services* proceeding, the Commission limits its decision to interconnected VoIP providers, in part because, unlike certain other IP-enabled services, the Commission continues to believe that interconnected VoIP service ''is increasingly used to replace analog voice service,'' including, in some cases, local exchange service. Indeed, as interconnected VoIP service improves and proliferates, consumers' expectations for these services trend toward their expectations for other telephone services. Thus, consumers reasonably expect interconnected VoIP services to include regulatory protections such as emergency 911 service and LNP.

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

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

Order, the Commission clarifies that LECs and CMRS providers have an obligation to port numbers to interconnected VoIP providers and their numbering partners subject to a valid port request.

B. Authority

6. In this Order, the Commission concludes that the Commission has ample authority to extend LNP obligations and numbering administration support obligations to interconnected VoIP providers. Specifically, the Commission concludes that it has authority to extend LNP obligations and numbering administration support obligations to interconnected VoIP providers and their numbering partners under the Commission's plenary numbering authority pursuant to section 251(e) of the Act. The Commission further finds authority in section 251(b)(2) of the Act for the obligations it extends to numbering partners that serve interconnected VoIP providers. Separately, the Commission analyzes the extension of the Commission's rules to interconnected VoIP providers under the Commission's Title I ancillary jurisdiction.

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

8. *Section 251(b)(2) Authority over Telecommunications Carriers.* The Commission finds that section 251(b)(2) provides an additional source of authority to impose LNP obligations on the LEC numbering partners of interconnected VoIP providers. Section 251(b)(2) states that all LECs have a ''duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.'' The Commission has long held that it has ''authority to require that number portability be implemented 'to the extent technically feasible' and that the Commission's authority under section 251(b)(2) encompasses all forms of number portability.'' The Commission's application of this authority is informed by the Act's focus on protecting consumers through number portability. Section 3 of the Act defines ''number portability'' as ''the ability of *users* of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' (emphasis added) In this Order, the Commission prescribes requirements that expand number portability to include ports to and from interconnected VoIP providers, and therefore find that section 251(b)(2) grants the Commission authority to impose obligations on the interconnected VoIP providers' LEC numbering partners to effectuate those requirements. By holding the LEC numbering partner responsible for ensuring a porting request is honored to the extent technically feasible, the Commission thus abides by this statutory mandate. The Commission interprets section 251(b)(2) to include a number porting obligation even when the switching of ''carriers'' occurs at the wholesale rather than retail level. Given Congress's imposition of the number portability obligations on all such carriers and the broad terms of the obligation itself, the Commission believes that its interpretation is a reasonable interpretation of the statute. To find otherwise would permit carriers to avoid numbering obligations simply by creating an interconnected VoIP provider affiliate and assigning the number to such affiliate. Further, to ensure that consumers retain this benefit as technology evolves, the Commission continues to believe that Congress's intent is that number portability be a ''dynamic concept'' that accommodates such changes. The Commission previously has found that it has the authority to alter the scope of porting obligations due to technological changes in how numbers are ported. Similarly, the Act provides ample authority for the logical extension of porting obligations due to technological changes in how telephone service is provided to end-user customers. The Commission exercises its authority under the Act to ensure that consumers' interests in their existing telephone numbers are adequately protected whether the customer is using a telephone number obtained from a LEC directly or indirectly via an interconnected VoIP provider. In either case, the LEC or LEC numbering partner must comply with the Commission's LNP rules.

9. *Ancillary Jurisdiction over Interconnected VoIP Services.* The Commission further concludes that the Commission has a separate additional source of authority under Title I of the Act to impose LNP obligations and numbering administration support obligations on interconnected VoIP providers. Ancillary jurisdiction may be employed, in the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [its] various responsibilities.'' Both predicates for ancillary jurisdiction are satisfied here.

10. First, as the Commission concluded in previous orders, interconnected VoIP services fall within the subject matter jurisdiction granted to the Commission in the Act. Section 1 of the Act, moreover, charges the Commission with responsibility for making available ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.'' Thus, section 1, in conjunction with section 251, creates a significant federal interest in the efficient use of numbering resources. Second, the Commission finds that requiring interconnected VoIP providers to comply with LNP rules and cost recovery mechanisms is reasonably ancillary to the effective performance of the Commission's fundamental responsibilities. As noted above, section 251(b)(2) of the Act requires LECs to provide number portability in accordance with the requirements prescribed by the Commission to the extent technically feasible. Further, section 251(e)(2) requires all carriers to bear the costs of numbering administration and number portability on a competitively neutral basis as defined by the Commission, and thereby seeks to prevent those costs from undermining competition. The Commission has interpreted section 251(e)(2) broadly to extend to all carriers that utilize NANP telephone numbers and benefit from number portability. In addition, as discussed above, section 1 of the Act charges the Commission with responsibility for making available ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.'' Because

interconnected VoIP service operates through the use of NANP telephone numbers and benefits from NANP administration and because this service is ''increasingly used to replace analog voice service''—a trend that the Commission expects to continue—it is important that the Commission take steps to ensure that interconnected VoIP service use of NANP numbers does not disrupt national policies adopted pursuant to section 251. As the Commission previously has stated, the Commission ''believe[s] it is important that [the Commission] adopt uniform national rules regarding number portability implementation and deployment to ensure efficient and consistent use of number portability methods and numbering resources on a nationwide basis. Implementation of number portability, and its effect on numbering resources, will have an impact on interstate, as well as local, telecommunications services.'' Additionally, the Commission has found that those providers that benefit from number resources should also bear the costs.

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

12. Further, if the Commission failed to exercise its ancillary jurisdiction, interconnected VoIP providers would sustain a competitive advantage against telecommunications carriers through the use and porting of NANP telephone numbers without bearing their share of the costs of LNP and NANP administration, thus defeating the critical requirement under section 251(e) that carriers bear such costs on a competitively neutral basis. Additionally, the Commission extends the LNP obligations to interconnected VoIP providers because doing so will have a positive impact on the efficient use of the Commission's limited numbering resources. The Commission avoids number waste by preventing an interconnected VoIP provider from porting-in a number from a carrier (often through its numbering partner) and then later refusing to port-out at the customer's request by arguing that no such porting obligation exists. Failure to extend LNP obligations to interconnected VoIP providers and their numbering partners would thwart the effective and efficient administration of the Commission's numbering administration responsibilities under section 251 of the Act. Therefore, extending the LNP and numbering administration support obligations to interconnected VoIP providers is ''reasonably ancillary to the effective performance of the Commission's * * * responsibilities'' under sections 251 and 1 of the Act and ''will 'further the achievement of long-established regulatory goals'' ' to make available an efficient and competitive communication service.

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

14. The Commission also notes that its actions here are consistent with other provisions of the Act. For example, the Commission is guided by section 706 of the 1996 Act, which, among other things, directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that ''promote competition in the local telecommunications market.'' The extension of the LNP obligations to interconnected VoIP providers may spur consumer demand for their service, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.

C. Local Number Portability Obligations

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

16. *Porting Obligations of an Interconnected VoIP Provider and its Numbering Partner.* As discussed above, section 3 of the Act defines local ''number portability'' as ''the ability of *users* of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one

telecommunications carrier to another.'' The Commission finds that the ''user'' in this context is the end-user customer that subscribes to the interconnected VoIP service and not the interconnected VoIP provider. To find otherwise would contravene the LNP goals of ''allowing customers to respond to price and service changes without changing their telephone numbers.'' Thus, it is the end-user customer that retains the right to port-in the number to an interconnected VoIP service or to port-out the number from an interconnected VoIP service.

17. As discussed above, both an interconnected VoIP provider and its numbering partner must facilitate a customer's porting request to or from an interconnected VoIP provider. By ''facilitate,'' the Commission means that the interconnected VoIP provider has an affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the interconnected VoIP customer (i.e., the ''user''), subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number. The Commission recognizes that when an interconnected VoIP provider obtains NANP telephone numbers and LNP capability through a numbering partner, the interconnected VoIP provider does not itself execute the port of the number from a technical perspective. In such situations, the interconnected VoIP provider must take any steps necessary to facilitate its numbering partner's technical execution of the port.

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

19. *Scope of Porting Obligations.* The Commission's porting obligations vary depending on whether a service is provided by a wireline carrier or a covered CMRS provider. As described above, interconnected VoIP providers generally obtain NANP telephone numbers through commercial arrangements with one or more traditional telecommunications carriers. As a result, the porting obligations to or from an interconnected VoIP service stem from the status of the interconnected VoIP provider's numbering partner and the status of the provider to or from which the NANP telephone number is ported. For example, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a wireline carrier for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) A wireless carrier whose coverage area overlaps with the geographic location of the porting-out numbering partner's rate center; (2) a wireline carrier with facilities or numbering resources in the same rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2). Similarly, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a covered CMRS provider for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to: (1) Another wireless carrier; (2) a wireline carrier within the telephone number's originating rate center; or (3) another interconnected VoIP provider whose numbering partner meets the requirements of (1) or (2).

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

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

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

22. The Commission declines to adopt new porting intervals that apply specifically to ports between interconnected VoIP providers and other providers through a numbering partner. The intervals that would be applicable to ports between the numbering partner and the other provider, if the port were not related to an interconnected VoIP service, will apply to the port of the NANP telephone number between the numbering partner and the other provider (or the other provider's numbering partner) when the end user with porting rights is a customer of the interconnected VoIP provider.

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

24. *Allocation of LNP Costs.* Section 251(e)(2) provides that ''[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' Because interconnected VoIP providers benefit from LNP, the Commission finds that they should contribute to meet the shared LNP costs. Further, similar to the Commission's finding in its *Cost Recovery Reconsideration Order,* the Commission also believes that interconnected VoIP providers may find it costly and administratively burdensome to develop region-specific attribution systems for all of their end-user services, and thus the Commission allows these providers to use a proxy based on the percentage of subscribers a provider serves in a particular region for reaching an estimate for allocating their end-user revenues to the appropriate regional LNPA. Providers that submit an attestation certifying that they are unable to divide their traffic and resulting end-user revenue among the seven LNPA regions precisely will be allowed to divide their end-user revenue among these regions based on the percentage of subscribers served in each region. Providers may use their billing databases to identify subscriber location.

D. Numbering Administration Cost Requirements

25. Although interconnected VoIP providers do not have any specific numbering administration requirements (e.g., pooling requirements), they do require the use of NANP numbering resources to provide an interconnected VoIP service, and thereby benefit from and impose costs related to numbering administration. Thus, the Commission requires interconnected VoIP providers to contribute to meet the shared numbering administration costs on a competitively neutral basis.

E. Implementation

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

Synopsis of Order on Remand

27. In its 2003 *Intermodal Number Portability Order* (68 FR 68831, Dec. 10, 2003), the Commission clarified that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's coverage area overlaps the geographic location in which the wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded the *Intermodal Number Portability Order* to the Commission. The court determined that the *Intermodal Number Portability Order* resulted in a legislative rule, and that the Commission had failed to prepare a FRFA regarding the impact of that rule on small entities, as required by the RFA. The court accordingly directed the Commission to prepare the required FRFA, and stayed future enforcement of the *Intermodal Number Portability Order* ''as applied to carriers that qualify as small entities under the RFA'' until the agency prepared and published that analysis. On April 22, 2005, the Commission issued a Public Notice seeking comment on an IRFA of the *Intermodal Number Portability Order* (70 FR 41655, July 20, 2005).

28. In accordance with the requirements of the RFA, the Commission has considered the potential economic impact of the intermodal porting rules on small entities and concludes that wireline carriers qualifying as small entities under the RFA will be required to provide wireline-to-wireless intermodal porting where the requesting wireless carrier's ''coverage area'' overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The Commission has prepared a FRFA as directed by the court, which is the second of two FRFAs set forth below.

Final Regulatory Flexibility Analysis, WC Docket No. 04–36 (Interconnected VoIP Services)

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the

IP–Enabled Services Notice in WC Docket No. 04–36 (69 FR 16193, Mar. 29, 2004). The Commission sought written public comment on the proposals in the notice, including comment on the IRFA. The Commission received comments specifically directed toward the IRFA from three commenters in WC Docket No. 04–36. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

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

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

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

4. The Small Business Administration (SBA) comments that the Commission's Notice does not contain concrete proposals and is more akin to an advance notice of proposed rulemaking or a notice of inquiry. The Commission disagrees with the SBA and Menard that the Commission should postpone acting in this proceeding—thereby postponing extending the application of the LNP and numbering administration support obligations to interconnected VoIP services—and instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives. The Commission believes these additional steps suggested by SBA and Menard are unnecessary because small entities already have received sufficient notice of the issues addressed in today's Report and Order, and because the Commission has considered the economic impact on small entities and what ways are feasible to minimize the burdens imposed on those entities, and, to the extent feasible, has implemented those less burdensome alternatives. The *IP-Enabled Services Notice* specifically sought comment on whether numbering obligations are appropriate in the context of IP-enabled services and whether action relating to numbering resources is desirable to facilitate the growth of IP-enabled services, while at the same time continuing to maximize the use and life of numbering resources in the North American Numbering Plan. The Commission published a summary of that notice in the **Federal Register**. *See Regulatory Requirements for IP-Enabled Services,* WC Docket No. 04–36, Notice of Proposed Rulemaking, 69 FR 16193 (Mar. 29, 2004). The Commission notes that a number of small entities submitted comments in this proceeding.

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

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 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 SBA.

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

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

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

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

9. The Commission has included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and ''is not dominant in its field of operation.'' 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.

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

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

competitive LEC services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

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

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

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

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

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

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

18. 800 and 800-Like Service Subscribers. These toll-free services fall within the broad economic census category of Telecommunications Resellers. This category ''comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census Bureau data for 2002 show that there were 1,646 firms in this category that operated for the entire year. Of this total, 1,642 firms had employment of 999 or fewer employees, and four firms had employment of 1,000 employees or more. Thus, the majority of these firms can be considered small. Additionally, it may be helpful to know the total numbers of telephone numbers assigned in these services. Commission data show that, as of June 2006, the total number of 800 numbers assigned was 7,647,941, the total number of 888 numbers assigned was 5,318,667, the total number of 877 numbers assigned was 4,431,162, and the total number of 866 numbers assigned was 6,008,976.

b. International Service Providers

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

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

21. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications

telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by the Commission's action.

c. Wireless Telecommunications Service Providers

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

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

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

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

26. The Commission also notes that, in the *Paging Second Report and Order* (62 FR 11616, Mar. 12, 1997), the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The Commission also notes that, currently, there are approximately 74,000 Common Carrier Paging licenses.

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

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

29. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than

$15 million for the preceding three calendar years. These standards defining ''small entity'' 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 qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

30. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. 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 35875, Jun. 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 commenced on October 3, 2001 and closed on October 16, 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.

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

32. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service and is subject to spectrum auctions. In the *220 MHz Third Report and Order* (62 FR 16004, Apr. 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.

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

34. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as 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. An auction of 52 Major Economic Area (MEA) 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.

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

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

37. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. 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 the Commission's 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, had average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, had 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.

38. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. 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 ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

39. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. 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 the rules and polices adopted herein.

40. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

41. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small

business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

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

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

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

45. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order* (64 FR 59656, Nov. 3, 2999), 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. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the Commission's rules in future auctions of 218–219 MHz spectrum.

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

47. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

2. Cable and OVS Operators

48. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' 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 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of

$10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

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

50. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 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. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small 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 the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

51. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). 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 of Cable and Other Program Distribution Services, which consists of such entities having $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. The Commission thus believes that at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

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

4. Other Internet-Related Entities

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

54. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

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

56. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the

content that they publish or broadcast.'' The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms small entities that may be affected by the Commission's action.

57. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of $23 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24, 999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under $10 million, and an additional 101 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of the firms in each of these three categories are small entities that may be affected by the Commission's action.

5. Equipment Manufacturers

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

59. *Electronic Computer Manufacturing.* This category ''comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 485 establishments in this category that operated with payroll during 2002. Of these, 476 had employment of under 1,000, and an additional four establishments had employment of 1,000 to 2,499. Consequently, the Commission estimates that the majority of these establishments are small entities.

60. *Computer Storage Device Manufacturing.* These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 170 establishments in this category that operated with payroll during 2002. Of these, 164 had employment of under 500, and five establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities

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

62. *Other Computer Peripheral Equipment Manufacturing.* Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 860 establishments in this category that operated with payroll during 2002. Of these, 851 had employment of under 1,000, and an additional five establishments had employment of 1,000 to 2,499. Consequently, the Commission estimates that the majority of these establishments are small entities.

63. *Audio and Video Equipment Manufacturing.* These establishments manufacture ''electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data, there were 571 establishments in this category that operated with payroll during 2002. Of these, 560 had employment of under 500, and ten establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

64. *Electron Tube Manufacturing.* These establishments are ''primarily engaged in manufacturing electron tubes and parts (except glass blanks).'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data, there were 102 establishments in this category that operated with payroll during 2002. Of these, 97 had employment of under 500, and one establishment had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

65. *Bare Printed Circuit Board Manufacturing.* These establishments are ''primarily engaged in manufacturing bare (i.e., rigid or flexible) printed circuit boards without mounted electronic components.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 936 establishments in this category that operated with payroll during 2002. Of these, 922 had employment of under 500, and 12 establishments had employment of 500 to 999.

Consequently, the Commission estimates that the majority of these establishments are small entities.

66. *Semiconductor and Related Device Manufacturing.* Examples of manufactured devices in this category include ''integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 1,032 establishments in this category that operated with payroll during 2002. Of these, 950 had employment of under 500, and 42 establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

67. *Electronic Capacitor Manufacturing.* These establishments manufacture ''electronic fixed and variable capacitors and condensers.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 104 establishments in this category that operated with payroll during 2002. Of these, 101 had employment of under 500, and two establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

68. *Electronic Resistor Manufacturing.* These establishments manufacture ''electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 79 establishments in this category that operated with payroll during 2002. All of these establishments had employment of under 500. Consequently, the Commission estimates that all of these establishments are small entities.

69. *Electronic Coil, Transformer, and Other Inductor Manufacturing.* These establishments manufacture ''electronic inductors, such as coils and transformers.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 365 establishments in this category that operated with payroll during 2002. All of these establishments had employment of under 500. Consequently, the Commission estimates that all of these establishments are small entities.

70. *Electronic Connector Manufacturing.* These establishments manufacture ''electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 321 establishments in this category that operated with payroll during 2002. Of these, 315 had employment of under 500, and three establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

71. *Printed Circuit Assembly (Electronic Assembly) Manufacturing.* These are establishments ''primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 868 establishments in this category that operated with payroll during 2002. Of these, 839 had employment of under 500, and 18 establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

72. *Other Electronic Component Manufacturing.* The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 1,627 establishments in this category that operated with payroll during 2002. Of these, 1,616 had employment of under 500, and eight establishments had employment of 500 to 999. Consequently, the Commission estimates that the majority of these establishments are small entities.

73. *Fiber Optic Cable Manufacturing.* These establishments manufacture ''insulated fiber-optic cable from purchased fiber-optic strand.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 96 establishments in this category that operated with payroll during 2002. Of these, 95 had employment of under 1,000, and one establishment had employment of 1,000 to 2,499. Consequently, the Commission estimates that the majority or all of these establishments are small entities.

74. *Other Communication and Energy Wire Manufacturing.* These establishments manufacture ''insulated wire and cable of nonferrous metals from purchased wire.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 356 establishments in this category that operated with payroll during 2002. Of these, 353 had employment of under 1,000, and three establishments had employment of 1,000 to 2,499. Consequently, the Commission estimates that the majority or all of these establishments are small entities.

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

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

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

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

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

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

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

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

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

1. As required by the Regulatory Flexibility Act, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was published for the *Intermodal Number Portability Order* (70 FR 41655, July 20, 2005). The Commission sought written public comment on the IRFA. The Commission received comments specifically directed toward the IRFA, which are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

2. Section 251(b) of the Communications Act requires local exchange carriers to provide number portability, to the extent technically feasible, in accordance with the requirements prescribed by the Commission. In the *Intermodal Number Portability Order* (68 FR 68831, Dec. 10, 2003), the Commission found that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The United States Court of Appeals for the District of Columbia remanded the *Intermodal Number Portability Order* to the Commission to prepare the required FRFA on the impact of the order on carriers that qualify as small entities under the RFA. After considering information received from commenters in response to the IRFA, the Commission concludes that wireline carriers qualifying as small entities under the RFA will be required to provide wireline-to-wireless intermodal porting where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.

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

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

4. As an initial matter, the Commission rejects arguments that carriers that qualify as ''small entities'' should not have to comply with the intermodal porting requirements until the Commission addresses issues pertaining to rating and routing that are pending in the intercarrier compensation proceeding. The issues that have been raised in this proceeding with respect to transporting calls to ported numbers are also before the Commission in the context of all numbers (without distinguishing between ported or non-ported numbers) in the intercarrier compensation proceeding. Further, as the Commission found in the *Intermodal Number Portability Order*, the issue of transport costs associated with calls to ported numbers is outside the scope of this proceeding and not relevant to the application of the LNP obligations under the Act.

5. The Commission also rejects recommendations that the Commission

create a partial or blanket exemption for small carriers from the wireline-to-wireless intermodal porting requirements based on the high costs of implementation. The Commission finds that small carriers have not demonstrated such significant costs associated with implementation of LNP to warrant an exemption. Several small carriers claim that they may face a variety of costs associated with wireline-to-wireless intermodal porting, which would be excessive in light of their small customer bases. However, other commenters point out that the cost information these carriers present shows a large range of cost estimates, and in fact, even when the estimates are taken at face value, they indicate that the cost of wireline-to-wireless intermodal LNP does not impose a significant economic burden on small entities. In addition, the Commission is not persuaded based on this record that the costs of implementing LNP are as large as the commenters suggest, given the scant support they provide for their estimates and their failure to demonstrate that all the estimated costs are of the sort that the Commission would allow to be attributed to the LNP end-user charge. For example, some commenters cite their estimated costs associated with transporting calls to ported numbers. However, as discussed above, the Commission previously declined to consider these as LNP-related costs, rather than costs of interconnection more generally, and the commenters here do not demonstrate that the Commission should reverse that conclusion.

6. Further, in response to small carrier concerns about LNP implementation costs, the Commission notes that wireline carriers generally only are required to provide LNP upon receipt of a specific request for the provision of LNP by another carrier. Thus, many of the small carriers may not be required to implement LNP immediately because there is no request to do so. Indeed, as the Commission found in the *First Number Portability Order on Reconsideration* (62 FR 18280, Apr. 15, 1997), these rights effectively constitute steps that minimize the economic impact of LNP on small entities. Further, carriers have the ability to petition the Commission for a waiver of their obligation to port numbers to wireless carriers if they can provide substantial, credible evidence that there are special circumstances that warrant a departure from existing rules. In addition, under section 251(f)(2), a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition the appropriate state commission for suspension or modification of the requirements of section 251(b). The Commission finds these existing safeguards further address commenters' concerns regarding the costs on small entities to implement LNP.

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

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. 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 section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

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

9. *Incumbent Local Exchange Carriers*. The Commission has included small incumbent local exchange carriers (LECs) in this RFA analysis. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category of Wired Telecommunications Carriers. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 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 the Commission's analyses and determinations in other, non-RFA contexts. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities.

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

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

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

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

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

13. The Commission invited comment on the intermodal porting rules with respect to their application to small entities in light of the RFA requirements. In accordance with the requirements of the RFA, the Commission has considered the potential economic impact of the intermodal porting rules on small entities and conclude that wireline carriers qualifying as small entities under the RFA will be required to provide wireline-to-wireless intermodal porting where the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The Commission finds that this approach best balances the impact of the costs that may be associated with the wireline-to-wireless intermodal porting rules for small carriers and the public interest benefits of those requirements.

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

15. Further, if there is a particular case where a carrier faces extraordinary costs, other regulatory avenues for relief are available. Specifically, a carrier may petition the Commission for additional time or waiver of the intermodal porting requirements if it can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules. In addition, under section 251(f)(2), a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition the appropriate state commission for suspension or modification of the requirements of section 251(b). Although some commenters have complained about the time and expense associated with the section 251(f)(2) mechanism, several others have indicated that the 251(f)(2) mechanism has been an effective method of addressing the potential burdens on small carriers. Further, in response to small carriers' concerns about LNP implementation costs, the Commission notes that wireline carriers generally only are required to provide LNP upon receipt of a specific request for the provision of LNP by another carrier. Thus, many of the small carriers may not be required to implement LNP immediately because there is no request to do so. Indeed, as the Commission found in the *First Number Portability Order on Reconsideration*, these rights effectively constitute steps that minimize the economic impact of LNP on small entities. The Commission finds these existing safeguards further address commenters' concerns regarding the costs on small entities to implement LNP.

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

F. Report to Congress

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

Final Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

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

Ordering Clauses

29. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 251, 303(r), the Report and Order in WC Docket No. 04–36 and CC Docket Nos. 95–116 and 99–200 *is adopted*, and that Part 52 of the

Commission's Rules, 47 CFR parts 52, is amended as set forth in Appendix B. The Report and Order shall become effective 30 days after publication in the **Federal Register**.

30. *It is further ordered* that pursuant to section 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 251, 303(r), the Order on Remand in CC Docket No. 95–116 is adopted. The Order on Remand shall become effective 30 days after publication in the **Federal Register**.

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, including the two Final Regulatory Flexibility Analyses and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, telecommunications, telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 52 of Title 47 of the Code of Federal Regulations as follows:

PART 52—NUMBERING

■ 1. The authority citation for part 52 is revised to read as follows:

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

■ 2. Section 52.12(a)(1)(i) introductory text is revised to read as follows:

§ 52.12 North American Numbering Plan Administrator and B&C Agent.

* * * * *

(a)(1) * * *

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

* * * * *

■ 3. Section 52.16 is amended by adding paragraph (g) to read as follows:

§ 52.16 Billing and Collection Agent.

* * * * *

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

■ 4. Section 52.17 is amended by adding paragraph (c) to read as follows:

§ 52.17 Costs of number administration.

* * * * *

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

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

§ 52.21 Definitions.

* * * * *

(h) The term ''interconnected VoIP provider'' is an entity that provides interconnected VoIP service as that term is defined in 47 CFR 9.3.

* * * * *

■ 6. Section 52.23 is amended by adding paragraph (h) to read as follows:

§ 52.23 Deployment of long-term database methods for number portability by LECs.

* * * * *

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

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

■ 7. Section 52.32 is amended by adding paragraph (e) to read as follows:

§ 52.32 Allocation of the shared costs of long-term number portability.

* * * * *

(e) For the purposes of this section, the term ''telecommunications carrier'' shall include interconnected VoIP providers as that term is defined in § 52.21(h); and ''telecommunications service'' shall include ''interconnected VoIP service'' as that term is defined in 47 CFR 9.3.

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

§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.

* * * * *

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

■ 9. Section 52.34 is added to read as follows:

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

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

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

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 06–121; 02–277; 01–235; 01–317; 00–244; 04–228; 99–360; FCC 07–216]

2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.