

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Athens, City of, Limestone County .....	010146	April 11, 1974, Emerg; September 28, 1979, Reg; July 7, 2009, Susp.	.....do .....	Do.
Limestone County, Unincorporated Areas.	010307	September 2, 1975, Emerg; July 16, 1981, Reg; July 7, 2009, Susp.	.....do .....	Do.
Mooresville, Town of, Limestone County.	010455	December 23, 2008, Emerg; NA, Reg; July 7, 2009, Susp.	.....do .....	Do.
Kentucky: Liberty, City of, Cassey County ...	210054	May 12, 1975, Emerg; July 3, 1986, Reg; July 7, 2009, Susp.	.....do .....	Do.
North Carolina:				
Cajahs Mountain, Town of, Caldwell County.	370452	NA, Emerg; March 6, 1990, Reg; July 7, 2009, Susp.	.....do .....	Do.
Caldwell County, Unincorporated Areas	370039	June 19, 1978, Emerg; August 16, 1988, Reg; July 7, 2009, Susp.	.....do .....	Do.
Gamewell, Town of, Caldwell County ...	370451	NA, Emerg; February 15, 2000, Reg; July 7, 2009, Susp.	.....do .....	Do.
Granite Falls, Town of, Caldwell County	370414	August 9, 1988, Emerg; August 16, 1988, Reg; July 7, 2009, Susp.	.....do .....	Do.
Hudson, Town of, Caldwell County .....	370450	NA, Emerg; March 6, 1990, Reg; July 7, 2009, Susp.	.....do .....	Do.
Lenoir, City of, Caldwell County .....	370040	March 29, 1978, Emerg; August 16, 1988, Reg; July 7, 2009, Susp.	.....do .....	Do.
<b>Region V</b>				
Ohio:				
Centerburg, Village of, Knox County .....	390307	June 27, 1975, Emerg; January 6, 1982, Reg; July 7, 2009, Susp.	.....do .....	Do.
Danville, Village of, Knox County .....	390308	June 12, 1975, Emerg; August 24, 1984, Reg; July 7, 2009, Susp.	.....do .....	Do.
Gambier, Village of, Knox County .....	390310	February 3, 1976, Emerg; January 30, 1981, Reg; July 7, 2009, Susp.	.....do .....	Do.
Knox County, Unincorporated Areas .....	390306	NA, Emerg; October 27, 1993, Reg; July 7, 2009, Susp.	.....do .....	Do.
Mount Vernon, City of, Knox County ...	390311	January 21, 1974, Emerg; August 2, 1982, Reg; July 7, 2009, Susp.	.....do .....	Do.
<b>Region X</b>				
Idaho:				
Bannock County, Unincorporated Areas	160009	April 30, 1974, Emerg; September 5, 1979, Reg; July 7, 2009, Susp.	.....do .....	Do.
Downey, City of, Bannock County .....	160165	February 8, 1985, Emerg; February 8, 1985, Reg; July 7, 2009, Susp.	.....do .....	Do.
Inkom, City of, Bannock County .....	160010	July 16, 1975, Emerg; September 15, 1978, Reg; July 7, 2009, Susp.	.....do .....	Do.
Lava Hot Springs, City of, Bannock County.	160011	May 20, 1975, Emerg; August 1, 1979, Reg; July 7, 2009, Susp.	.....do .....	Do.
McCammon, City of, Bannock County ..	160176	December 21, 1978, Emerg; December 21, 1978, Reg; July 7, 2009, Susp.	.....do .....	Do.
Pocatello, City of, Bannock County .....	160012	February 7, 1974, Emerg; May 1, 1980, Reg; July 7, 2009, Susp.	.....do .....	Do.

\* -do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 23, 2009.

**Deborah Ingram,**

*Acting Deputy Assistant Administrator,  
Mitigation Directorate, Department of  
Homeland Security, Federal Emergency  
Management Agency.*

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**FEDERAL COMMUNICATIONS  
COMMISSION**

**47 CFR Part 9**

[WC Docket No. 08-171; FCC 08-249]

**Implementation of the Net 911  
Improvement Act of 2008**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (Commission) has adopted rules implementing certain key

provisions of the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), which was enacted on July 23, 2008. Congress directed the Commission to issue rules implementing certain key provisions of the NET 911 Act no later than October 21, 2008. In particular, to effectuate the statutory requirement that providers of interconnected voice over Internet Protocol (interconnected VoIP) service provide 911 and enhanced 911 (E911) service in full compliance with the Commission's rules, Congress mandated that the Commission issue regulations in this time frame that, among other

things, ensure that interconnected VoIP providers have access to any and all capabilities they need to satisfy that requirement.

**DATES:** Effective October 5, 2009, except for § 9.7(a) which contains information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of such requirements.

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

Interested parties may submit PRA comments identified by OMB Control Number 3060-1085, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* Parties who choose to file by e-mail should submit their comments to [Tim.Stelzig@fcc.gov](mailto:Tim.Stelzig@fcc.gov). Please include WC Docket Number 08-171 and FCC No. 08-249 in the subject line of the message.

- *Mail:* Parties who choose to file by paper should submit their comments to Tim Stelzig, Federal Communications Commission, Room 5-C261, 445 12th Street, SW., Washington, DC 20554.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Tim Stelzig, Competition Policy Division, Wireline Competition Bureau, at (202) 418-0942. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418-0214, or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (Order) in WC Docket No. 08-171, FCC 08-249, adopted and released October 21, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257,

Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

### Final Paperwork Reduction Act of 1995 Analysis

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

In this present document, we have assessed the effects of the rules implementing the Net 911 Improvement Act of 2008, and find the rules adopted are warranted. The reasons for this conclusion are explained in more detail below.

*Report to Congress:* On January 27, 2009, the Commission sent a copy of the Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. [A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register**.]

### Synopsis of the Order

1. *Background.* The Commission released a notice of proposed rulemaking on August 25, 2008, seeking comment regarding the specific duties imposed by the NET 911 Act and the regulations that the Commission is required to adopt. *See* 73 FR 50741 (Aug. 28, 2008). The Commission sought comment, for example, on what 911 and E911 capabilities must be made available to interconnected VoIP providers, and how such capabilities could be made available on the same rates, terms, and conditions afforded to wireless providers. The Commission

also sought comment on what technical, network security, or information privacy requirements regarding 911 and E911 calls are specific to interconnected VoIP service.

2. *Discussion.* In the Order, the Commission turned first to its obligation under section 6(c)(1) of the Wireless 911 Act to issue regulations ensuring that interconnected VoIP providers can exercise their rights of access to any and all "capabilities" they need to be able to provide 911 and E911 service in full compliance with the Commission's rules from "an entity with ownership or control over such capabilities." Congress did not define key terms of these provisions, such as the "capabilities" to which interconnected VoIP providers have a right of access, or an "entity" with ownership or control over capabilities, but left the elucidation of these terms to the Commission. The Commission interpreted these terms, examining the statutory language itself, its legislative history, and the record. The Commission next discussed the "rates, terms and conditions" that apply to that access. It then imposed certain security requirements to protect the integrity of the 911 system.

3. *Access to E911 Capabilities.* Need for Rules in General. The Order first discussed the scope of the Commission's obligation to "issue regulations implementing the [NET 911] Act, including regulations that \* \* \* ensure that IP-enabled voice service providers have the ability to exercise their rights [to access]." The Commission concluded that having rules establishing standards for access to capabilities best fulfills the Commission's obligations and the goals of the NET 911 Act. Congress clearly intended for the Commission to implement regulations more specific than the statutory language itself. In section 6(c), Congress specifically directed the Commission to conduct this rulemaking to assure interconnected VoIP providers' rights under section (6)(b), taking into account specific factors, such as "any technical, network security, or information privacy requirements that are specific to IP-enabled voice services." If Congress had not intended the Commission to implement rules more detailed than the statute itself, it would not have instructed the Commission to take certain things into account; it would have left the statutory language as sufficient and self-effectuating. The Commission therefore disagreed with commenters who suggested that no specific rules are needed, or that any rules can simply parrot the statutory language.

4. The Commission also declined to issue highly detailed rules listing capabilities or entities with ownership or control of those capabilities. As recognized above and explained further in the Order, the nation's 911 system varies from locality to locality, and overly specific rules would fail to reflect these local variations. Furthermore, as Congress recognized, the nation's 911 system is evolving from its origins in the circuit-switched world into an IP-based network. The Commission stated that its rules should be sufficiently flexible to accommodate this ongoing process. Indeed, Congress specifically prohibited the Commission from "issu[ing] regulations that require or impose a specific technology or technological standard," which specific, invariable rules could do. The Commission therefore adopted rules that establish standards for determining to what capabilities interconnected VoIP providers have a right of access and from which entities, and explained in the Order what capabilities and entities would typically (but not necessarily) be encompassed in today's architecture.

5. *Standard for Right of Access to Capabilities.* Consistent with the approach just described, the Commission adopted rules establishing a standard for determining to what capabilities interconnected VoIP providers have a right of access, and also providing examples of the capabilities that will typically be required in most local 911 and E911 architectures. In later parts of the Order, the Commission explained that capabilities may only be used for the provision of 911 and E911 service.

6. The analysis in the Order begins first with the statutory language. While the statute does not define the term "capabilities," it does provide that interconnected VoIP providers have a right of access to capabilities on the same "rates, terms, and conditions that are provided to a provider of commercial mobile service." Pursuant to its authority under the NET 911 Act, the Commission issued rules to grant interconnected VoIP providers a right of access to the capabilities commercial mobile radio service (CMRS) providers use to provide E911 service equal to the access rights made available to CMRS providers. Congress clearly recognized a commonality between the capabilities needed by interconnected VoIP providers and those already used by CMRS providers. Indeed, if an owner or controller of a capability used to provide E911 service made it available to a CMRS provider at a certain rate but refused to grant interconnected VoIP providers access to that same capability,

that interconnected VoIP provider would not "have a right of access to such capabilities \* \* \* to provide [E911] service on the same rates, terms, and conditions that are provided to a provider of [CMRS]." The Commission also found support for this position in the context in which this legislation was enacted. As explained above, the capabilities used by interconnected VoIP providers—particularly those providing a nomadic or mobile service—to provide E911 service are similar to those used by CMRS providers; interpreting the statute to mean that interconnected VoIP providers have a right of access to those capabilities used by CMRS providers furthers Congress's goal of "ensur[ing] that consumers using Voice over Internet Protocol (VoIP) service can access enhanced 911 (E-911) emergency services by giving VoIP providers access to the emergency services infrastructure."

7. Second, with respect to any capabilities that are not provided to CMRS providers for their provision of E911 service, the Commission interpreted the NET 911 Act as granting interconnected VoIP providers a right of access if the capability is necessary for the interconnected VoIP provider to provide E911 service in compliance with the Commission's rules. For reasons similar to those outlined in the previous paragraph, the Commission stated the Commission's belief that the right of an interconnected VoIP provider to certain rates, terms, and conditions necessarily includes a right of access to such capability. Section 6(c)(1)(C) of the Wireless 911 Act provides that "with respect to any capabilities that are not required to be made available to a [CMRS] provider but that the Commission determines \* \* \* are necessary for an [interconnected VoIP] provider to comply with its obligations [to provide E911 service in accordance with the Commission's rules], that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a [CMRS] provider." The Commission also found that this text limits interconnected VoIP providers' right of access to such capabilities to those that are necessary to provide E911 service in compliance with the Commission's rules.

8. Third, regardless whether a capability is used by a CMRS provider or not, for any capability an interconnected VoIP provider gets pursuant to rights granted in the NET 911 Act and the Commission's implementing rules, the Order stated that such capability may be used by that

provider *only* for the purpose of providing E911 service in accordance with the Commission's rules. The NET 911 Act explicitly mandates this limit on interconnected VoIP providers' statutory access rights with respect to capabilities CMRS providers use to provide E911 service. The Commission recognized that the statute does not expressly contain a similar limitation in section 6(c)(1)(C), which grants interconnected VoIP providers a right to access the capabilities they need to provide E911 service even if they are not capabilities CMRS providers use to provide E911 service. Nevertheless, the Commission's interpretation of the NET 911 Act is informed by the legislative history as well as Congress's overarching purpose in enacting the provisions at issue here. Both with respect to capabilities that are used by CMRS providers and those that are not, the NET 911 Act is clear that its purpose is to facilitate interconnected VoIP providers' ability to provide E911 service in compliance with the Commission's rules, without granting access rights to additional capabilities. This overarching purpose indicates that Congress intended that *any* capabilities to which access is gained pursuant to the NET 911 Act may be used exclusively for the purpose of providing E911 service. In addition, the record indicates that CMRS providers use most of the capabilities interconnected VoIP providers need to provide E911 service. The Commission did not find any reason to believe that Congress would have granted interconnected VoIP providers more expansive rights with respect to the relatively small subset of capabilities that are not used by CMRS providers to provide E911 service than those capabilities that are. Therefore, the Commission stated it is reasonable to require that interconnected VoIP providers use all capabilities that they obtain pursuant to the NET 911 Act and this Order exclusively for the provision of E911 service in compliance with the Commission's rules.

9. *Typical Capabilities.* The record reflects general consensus as to what capabilities are used by CMRS providers today and what capabilities are not used by CMRS providers but are "necessary" for interconnected VoIP providers to comply with the Commission's rules. As AT&T explains, CMRS providers have been offering E911 services for many years and even interconnected VoIP providers have been providing such services since 2005. The Commission therefore interpreted "capabilities" to include all those items described in part II of the Order that are used by wireless

providers today or that are not used by wireless providers but are necessary to interconnected VoIP providers' compliance with the Commission's rules. Thus, in a typical local architecture, "capabilities" will include: the Selective Router; the trunk line(s) between the Selective Router and the PSAP(s); the Automatic Location Information Database (ALI Database); the Selective Router Database (SR Database); the Database Management System (DBMS), the Master Street Address Guide (MSAG); pseudo-ANIs (p-ANIs); Emergency Service Numbers (ESNs); mobile switching center capabilities; mobile positioning center capabilities; shell records; the data circuits connecting these elements; and the network elements, features, processes, and agreements necessary to enable the use of these elements.

10. *Entities with Ownership or Control of Capabilities.* The Commission concluded that interconnected VoIP providers are entitled to access to capabilities from any entity that owns or controls such capabilities. Again, it found this interpretation to be the most natural reading of the statutory language. Section 6(b) grants interconnected VoIP providers a right to access "such capabilities," with "such" referring back to the "capabilities [an interconnected VoIP seeks] to provide 9-1-1 and enhanced 9-1-1 service from an entity with ownership or control over such capabilities." Congress's use of the term "an entity" instead of "the entity" strongly suggests that Congress understood that capabilities might be available from multiple sources and intended a broad interpretation of the scope of "entities" obligated to provide access to capabilities. The Commission therefore interpreted the NET 911 Act to impose obligations of access on each of the entities described in Part II.D of the Order, including in typical E911 architectures: incumbent LECs, PSAPs and local authorities, VoIP Positioning Centers (VPCs), CMRS providers, competitive carriers, and the Interim RNA to the extent any of these entities has "ownership or control" over any capabilities to which interconnected VoIP providers have a right of access.

11. The Commission recognized that in some instances, multiple entities may have ownership or control of similar capabilities in the same local area. It saw nothing in the NET 911 Act to suggest that only certain of those entities would have the obligation to provide access. Indeed, if some but not all entities had that obligation, disputes would certainly arise over which entities were subject to the Act, causing delays in granting interconnected VoIP

providers access and thwarting Congress's ultimate goal of "facilitating the rapid deployment of IP-enabled 911 and E911 services." Finally, the Commission recognize that it does not normally regulate some of the entities it described in this part of the Order, such as PSAPs and VPCs. Yet Congress has imposed a duty on them and instructed the Commission to issue regulations to "ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b)." As Congress has instructed the Commission to take these actions, it has also given the Commission the authority it needs to do so.

12. *Rates, Terms, and Conditions.* The NET 911 Act also mandates that the rates, terms, and conditions under which access to 911 and E911 capabilities is provided are to be the same as made available to CMRS providers. Under the rules the Commission issued in the Order, interconnected VoIP providers may exercise these rights to fulfill their obligation to provide 911 and E911 in full compliance with the Commission's rules.

13. As a threshold matter, the Commission found that issuing rules of general applicability regarding rates, terms, and conditions best fulfills the goals of the NET 911 Act. The rules adopted in the Order are specific enough to bring market certainty and clear direction while also being flexible enough to ensure that Congress's aims are met in a wide variety of circumstances. Contrary to the approach advocated by some commenters, the Commission found no indication that Congress intended the Commission to issue detailed regulations regarding the pricing methodology under which E911 capabilities must be made available. Instead, the Commission found it sufficient to specify that those rates, terms, and conditions must *in all instances be reasonable*. One indicia of reasonableness will be whether the rates, terms, and conditions under which E911 capabilities are made available to interconnected VoIP providers are the same as the rates, terms, and conditions made available to CMRS providers.

14. First, the Commission considered the case where a capability is in fact provided to CMRS carriers, such that the owner or controller of that capability must grant interconnected VoIP providers access to that capability. In that case, the statute is clear on its face that the capability must be made available "on the same rates, terms, and conditions that are provided to" a CMRS provider. The Commission

interpreted the term "provided" as used in this provision as encompassing not only those capabilities that are actually provisioned to a CMRS provider as well as the rates, terms, and conditions under which they are provisioned, but also those capabilities that are currently offered to a CMRS provider as well as the rates, terms, and conditions under which they are offered. The Commission interpreted "provided" broadly to ensure that interconnected VoIP providers are able to access the same capabilities that CMRS providers may access on the same rates, terms, and conditions that are available to CMRS providers.

15. In addition, if an owner or controller of a capability does not provide a capability to CMRS providers but is required to grant interconnected VoIP providers access to such capability under the rules described in Part III.A of the Order, such access must be provided on the rates, terms, and conditions that would be offered to a CMRS provider. The Commission did not believe that Congress intended for it, within the 90-day timeframe the Commission was given to adopt rules implementing the NET 911 Act, to conduct detailed pricing proceedings to determine, for each such capability offered by each type of provider in various localities around the country, what the exact price for each capability would be if it were offered to CMRS providers. Congress clearly did intend, however, for the Commission to provide guidance as to how the rates, terms, and conditions for these capabilities should be determined. To further that intent, minimize disputes over these rates, terms, and conditions, and help achieve Congress's ultimate goal "[t]o promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E911 services," the Commission provided further guidance. Specifically, if an owner or controller does not provide a capability to CMRS providers but is required to give interconnected VoIP providers access to such capability under the rules described in Part III.A of the Order, such access must be made available on the same rates, terms, and conditions that are offered to other telecommunications carriers or any other entities. The Commission stated that such rates, terms, and conditions are a reasonable proxy for the rates, terms and conditions that would be provided to a CMRS provider. To the extent an owner or controller of a capability used to provide E911 service provides a single capability to more than one CMRS provider or other entity, an interconnected VoIP provider that

requests access to such capability is entitled to the rates, terms and conditions provided to any such single other provider.

16. If an owner or controller of a capability required to be made available does not currently make that capability available to any other entities, the rates, terms and conditions under which that owner or controller must provide access to a requesting interconnected VoIP provider must be reasonable, and should be reached through commercial negotiation. Given the industry's track record in working diligently and on an accelerated time table to implement the *VoIP 911 Order* and the importance all industry participants attach to having a reliable and effective 911 and E911 network, the Commission stated that the capability owner or controller and the interconnected VoIP provider will be able to expeditiously negotiate reasonable rates, terms, and conditions for that capability. The Commission clarified that in granting interconnected VoIP providers new contractual rights, it did not abrogate any existing commercial agreements that interconnected VoIP providers may already have reached for access to capabilities for the provision of E911 service. Finally, the Commission emphasized that all rights to capabilities that the NET 911 Act grants to an interconnected VoIP provider are "for the exclusive purpose of complying with \* \* \* its obligations under subsection (a) [*i.e.* the Commission's existing E911 rules]." The NET 911 Act does not grant, and the Commission's rules do not grant, access to capabilities beyond what interconnected VoIP providers need to provide 911 and E911 service, nor does the statute or the Commission's rules grant access to capabilities for any purpose other than compliance with the Commission's 911 and E911 rules.

17. *Technical, Network Security, and Information Privacy Requirements.* To protect the security and reliability of the E911 network, interconnected VoIP providers may obtain access to E911 capabilities only in compliance with the specific criteria set forth below. The safety of our nation's citizens vitally depends upon protecting the emergency services network from security threats. In the Order, as required by the NET 911 Act, the Commission granted interconnected VoIP providers access to E911 capabilities. Expanding the range of entities that have access to the E911 network raises new challenges. As NENA has said, VoIP technology "presents new challenges and security issues [for 911 service] as it breaks the bond between access and service

provider characteristics of legacy networks and at this time lacks the legislative and regulatory requirements that apply to more conventional telephone services."

18. Although Congress has granted interconnected VoIP providers additional rights to access E911 capabilities, in most cases, the Commission did not anticipate significant deviation from current practices. Commenters agree that interconnected VoIP providers today are successfully using numbering partners and other 911 service providers to deliver E911 calls to the appropriate PSAP. For example, Vonage reports that for "98.45% of its customers, Vonage [currently] provides the full suite of E911 service" pursuant to NENA's standard and is in the process of obtaining the capabilities it needs to provide E911 service for most of the remainder of its customers.

19. NENA has developed national VoIP E911 requirements, referred to as NENA's i2 standard, that are "designed to ensure that VoIP 9-1-1 calls are routed and presented in a wireline equivalent manner." The Commission stated that any interconnected VoIP provider that is in compliance with this standard already is coordinating its efforts with the other organizational entities responsible for providing E911 service.

20. The Commission required interconnected VoIP providers to comply with all applicable industry network security standards to the same extent as traditional telecommunications carriers when they access capabilities traditionally used by carriers. The Commission recognized the security of the nation's emergency services network depends on many interlocking measures that collectively preserve the integrity of the 911 system from unauthorized access and use. For instance, in addition to the security concerns discussed above, the network elements used to provide 911 service must be kept physically secure. The E911 network must also be kept secure against unauthorized electronic access, such as through hacking. NENA reports that "[t]he existing Emergency services network provides a relatively high degree of security for correctness of information, integrity, and authorization of access, authenticity/secretcy, and accuracy of information." By requiring interconnected VoIP providers to comply with the same standards as carriers, the Commission was able to expand access to the E911 system without compromising network security.

21. Finally, the Commission's rules contemplate that incumbent LECs and other owners or controllers of 911 or E911 infrastructure will acquire information regarding interconnected VoIP providers and their customers for use in the provision of emergency services. The Commission stated it fully expects that these entities will use this information only for the provision of E911 service. The Commission further clarified that no entity may use customer information obtained as a result of the provision of 911 or E911 services for marketing purposes.

#### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NET 911 Notice in WC Docket 08-171. See 73 FR 50741 (Aug. 28, 2008). The Commission sought written public comment on the proposals in the Net 911 Notice, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### *A. Need for, and Objectives of, the Rules*

2. In the Report and Order (Order), the Commission adopted rules implementing certain key provisions of the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act). The NET 911 Act, signed into law on July 23, 2008, is designed to "promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E911 services, encourage the Nation's transition to a national IP-enabled emergency network, and improve 911 and enhanced 911 (E911) access to those with disabilities." Congress directed the Commission to issue rules implementing certain key provisions of the NET 911 Act no later than October 21, 2008. In particular, to effectuate the requirement that providers of interconnected voice over Internet Protocol (interconnected VoIP) service provide 911 and enhanced 911 (E911) service without exception, Congress mandated that the Commission issue regulations in this time frame that, among other things, ensure that interconnected VoIP providers have access to any capabilities they need to satisfy that requirement. In the Order, the Commission fulfilled that duty and took steps to ensure that interconnected VoIP providers will use the capabilities they gain as a result of the Order to provide 911 and E911 in complete accord with the Commission's rules.

3. Specifically, in the Order the Commission issued rules that give interconnected VoIP providers rights of access to any and all capabilities necessary to provide E911 from any entity that owns or controls those capabilities. The Commission establish a standard to determine the rates, terms, and conditions that will apply to that access and also restrict interconnected VoIP provider's access to capabilities for the sole purpose of providing 911 or E911 service. Finally, interconnected VoIP providers must comply with all applicable industry network security standards to the same extent as traditional telecommunications carriers when they access capabilities traditionally used by carriers.

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

4. No comments were submitted specifically in response to the IRFA.

*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. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

1. Telecommunications Service Entities

9. *Wireline Carriers and Service Providers.* We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation." 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. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 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 Order.

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, 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 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, 89 carriers have reported that they are

"Other Local Service Providers," and all 89 have 1,500 or fewer 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, 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

13. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

14. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such

a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

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

17. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 85 are estimated to have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

18. *800 and 800-Like Service Subscribers*. 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 December 2007, the total number of 800 numbers assigned was 7,860,000, the total number of 888 numbers assigned was 5,210,184, the total number of 877 numbers assigned was 4,388,682, and the total number of 866 numbers assigned was 7,029,116.

19. *International Service Providers*. 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 "All Other Telecommunications."

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, a business is small if it has \$15.0 million or less in average annual receipts. Census Bureau data for 2002 show that there were a total of 371 firms under this category 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, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

21. The second category of All 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, a business is small if it has \$25.0 million or less in average annual receipts. Census Bureau data for 2002 show that for this category

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, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

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

23. *Wireless Telecommunications Carriers (except Satellite)*. The SBA has developed a small business size standard for wireless firms under the broad category of "Wireless Telecommunications Carriers (except Satellite)." Under this category, a wireless business is small if it has 1,500 or fewer employees. Because the data currently available were gathered under previous NAICS codes, the discussion in the remainder of this section tracks these formerly used categories.

24. Under its prior categories, the SBA categorized wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." For the former 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 former 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.

25. *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, 434 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. We have estimated that 222 of these are small under the SBA small business size standard.

26. *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, 281 carriers have reported that they are engaged in the provision of "Paging and Messaging Service." Of this total, we estimate that 279 have 1,500 or fewer employees, and two have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

27. We also note that, in the *Paging Second Report and Order*, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. 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. We also note that, currently, there are approximately 74,000 Common Carrier Paging licenses.

28. *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.

29. *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, 434 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 222 of these are small under the SBA small business size standard.

30. *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.

31. *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*. 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.

32. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees

and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. 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.

**33. 220 MHz Radio Service—Phase II Licensees.** The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. 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.

**34. 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 three 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.

**35. 700 MHz Guard Band Licensees.** In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. 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.

**36. 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.

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

**38. 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 our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, had average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling 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.

39. *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. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

40. *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 policies adopted herein.

41. *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. We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. 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.

42. 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 us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission’s auction rules.

43. 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). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

44. 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, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

45. *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, we conclude that

the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

46. *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*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. 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. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

47. *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, we believe 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 our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small

entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

47A. *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 we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having \$13.5 million or less in annual receipts. 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. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

51. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). 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. We thus believe that at least some of the OVS operators may qualify as small entities.

### 3. Internet Service Providers

52. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity." 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, we estimate that the majority of these firms are small entities that may be affected by our action.

### 4. Other Internet-Related Entities

53. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, 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, we estimate that the majority of these firms are small entities that may be affected by our action.

54. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily \* \* \* provid[e] infrastructure for hosting or data processing services." 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, we estimate that the majority of these firms are small entities that may be affected by our action.

55. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, 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, we estimate that the majority of these firms are small entities that may be affected by our action.

56. *Internet Publishing and Broadcasting.* "This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast." 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, we estimate that the majority of these firms are small entities that may be affected by our action.

57. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers,

such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of \$25 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, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

### 5. Equipment Manufacturers

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

59. *Electronic Computer Manufacturing.* This category "comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers." 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, we estimate that the majority of these establishments are small entities.

60. *Computer Storage Device Manufacturing.* These establishments manufacture “computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.” 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, we estimate that the majority of these establishments are small entities.

61. *Computer Terminal Manufacturing.* “Computer terminals are input/output devices that connect with a central computer for processing.” 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, we estimate that all of these establishments are small entities.

62. *Other Computer Peripheral Equipment Manufacturing.* Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. 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, we estimate that the majority of these establishments are small entities.

63. *Audio and Video Equipment Manufacturing.* These establishments manufacture “electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument

amplifications.” 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, we estimate 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, we estimate that the majority of these establishments are small entities.

65. *Bare Printed Circuit Board Manufacturing.* These establishments are “primarily engaged in manufacturing bare (*i.e.*, rigid or flexible) printed circuit boards without mounted electronic components.” 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, we estimate that the majority of these establishments are small entities.

66. *Semiconductor and Related Device Manufacturing.* Examples of manufactured devices in this category include “integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.” 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, we estimate that the majority of these establishments are small entities.

67. *Electronic Capacitor Manufacturing.* These establishments manufacture “electronic fixed and variable capacitors and condensers.” 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, we estimate that the majority of these establishments are small entities.

68. *Electronic Resistor Manufacturing.* These establishments manufacture “electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors.” 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, we estimate that all of these establishments are small entities.

69. *Electronic Coil, Transformer, and Other Inductor Manufacturing.* These establishments manufacture “electronic inductors, such as coils and transformers.” 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, we estimate that all of these establishments are small entities.

70. *Electronic Connector Manufacturing.* These establishments manufacture “electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic.” 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, we estimate that the majority of these establishments are small entities.

71. *Printed Circuit Assembly (Electronic Assembly) Manufacturing.*

These are establishments “primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.” 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, we estimate 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, we estimate that the majority of these establishments are small entities.

*73. Fiber Optic Cable Manufacturing.* These establishments manufacture “insulated fiber-optic cable from purchased fiber-optic strand.” 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, we estimate that the majority or all of these establishments are small entities.

*74. Other Communication and Energy Wire Manufacturing.* These establishments manufacture “insulated wire and cable of nonferrous metals from purchased wire.” 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, we estimate that the majority or all of these establishments are small entities.

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

75. Although the Commission granted interconnected VoIP providers additional rights to access E911 capabilities in the Order, in most cases, the Commission does not anticipate significant deviation from current practices. In the Commission’s *VoIP 911 Order*, the Commission required interconnected VoIP providers to provide E911 service using the existing wireline 911 infrastructure. Under the Commission’s VoIP rules, many interconnected VoIP providers today are successfully using numbering partners and other 911 service providers to deliver 911 or E911 calls to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

76. 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.

77. The *NET 911 Notice* sought comment regarding the specific duties imposed by the NET 911 Act and the regulations that the Commission is required to adopt. Specifically, in the *NET 911 Notice*, the Commission invited comment on what costs and burdens any new rules might impose upon small entities and how they could be ameliorated. For instance, the Commission specifically sought comment as to whether there are any issues or significant alternatives that the Commission should consider to ease the burden on small entities. The Commission emphasized that it must assess the interests of small businesses in light of the NET 911 Act’s goal of ensuring that interconnected VoIP providers have access to any and all capabilities they need to provide 911 and E911 service.

78. While, like the Net 911 Act, the rules the Commission adopted in the Order apply to all providers of

interconnected VoIP service and any entity that owns or controls 911 or E911 capabilities, the Commission attempted to minimize the impact of the new rules on small entities to the extent consistent with Congress’s intent. The Commission considered several alternatives, and in the Order, imposed minimal regulation on small entities to the extent possible. As an initial matter, as noted above, many interconnected VoIP providers today are successfully delivering E911 calls to the appropriate PSAP and the Commission does not anticipate significant deviation from current practices, particularly from small entities. As they have done in the past, small interconnected VoIP providers may still offer E911 service indirectly through a third party, such as a competitive LEC, or through any other solution that allows the provider to offer E911 service in compliance with the Commission’s rules.

79. Furthermore, the Commission considered but declined to issue highly detailed rules listing specific capabilities or entities with ownership or control of those capabilities. As recognized above, the nation’s 911 system varies from locality to locality, and overly specific rules would fail to reflect these local variations, thereby placing undue burdens on all entities, including any small entities, involved in providing E911 service. Small interconnected VoIP providers and small entities that own or control those capabilities will benefit from the flexibility of the Commission’s rules, which, as noted above, will accommodate the local variations as well as the various technologies necessary for 911 and E911 service.

80. The Commission also considered but declined to issue highly detailed rules setting forth the pricing methodology under which a capability would be provided to an interconnected VoIP provider. The Commission’s rules required that the rates, terms, and conditions shall be: (1) The same as the rates, terms, and conditions that are made available to CMRS providers, or (2) in the event such capability is not made available to CMRS providers, the same rates, terms, and conditions that are made available to any telecommunications carrier or other entity for the provision of 911 or E911 service; or (3) otherwise on the rates, terms, and conditions reached through commercial agreement; and (4) in any case, reasonable. The Commission concluded that it was important that the rates, terms, and conditions be consistent with Congress’ intent and in all instances be reasonable. Thus, those small entities that seek to access

capabilities directly will be assured they have access to capabilities under reasonable rates, terms, and conditions, thereby minimizing significant economic impact on small entities.

### Ordering Clauses

81. Accordingly, *it is ordered* that pursuant to sections 1, 4(i)-(j), 251(e) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 251(e), 303(r), and section 101 of the NET 911 Act, the Report and Order in WC Docket No. 08-171 *is adopted*, and that part 9 of the Commission's Rules, 47 CFR part 9, is added as set forth in the rule changes. Effective October 5, 2009, except for § 9.7(a) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB).

82. *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, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 9

Communications, Interconnected Voice over Internet Protocol Services, Telephone.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

### Final Rules

■ For the reasons discussed in the preamble, part 9 of Title 47 of the Code of Federal Regulations is amended to read as follows:

### PART 9—INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES

■ 1. The authority citation for part 9 is amended to read as follows:

**Authority:** 47 U.S.C. 151, 154(i)-(j), 251(e), 303(r), and 615a-1 unless otherwise noted.

■ 2. Section 9.1 is revised to read as follows.

#### § 9.1 Purposes.

The purposes of this part are to set forth the 911 and E911 service requirements and conditions applicable to interconnected Voice over Internet Protocol service providers, and to ensure that those providers have access to any and all 911 and E911 capabilities they need to comply with those 911 and E911 service requirements and conditions.

■ 3. Section 9.3 is amended by adding in alphabetical order definitions of "Automatic Location Information (ALI)" and "CMRS" to read as follows.

#### § 9.3 Definitions.

\* \* \* \* \*

*Automatic Location Information (ALI).* Information transmitted while providing E911 service that permits emergency service providers to identify the geographic location of the calling party. *CMRS.* Commercial Mobile Radio Service, as defined in § 20.9 of this chapter.

\* \* \* \* \*

■ 4. Section 9.7 is added to read as follows.

#### § 9.7 Access to 911 and E911 service capabilities.

(a) *Access.* Subject to the other requirements of this part, an owner or controller of a capability that can be used for 911 or E911 service shall make that capability available to a requesting interconnected VoIP provider as set forth in paragraphs (a)(1) and (a)(2) of this section.

(1) If the owner or controller makes the requested capability available to a CMRS provider, the owner or controller must make that capability available to the interconnected VoIP provider. An owner or controller makes a capability available to a CMRS provider if the owner or controller offers that capability to any CMRS provider. (2) If the owner or controller does not make the requested capability available to a CMRS provider within the meaning of paragraph (a)(1) of this section, the owner or controller must make that capability available to a requesting interconnected VoIP provider only if that capability is necessary to enable the interconnected VoIP provider to provide 911 or E911 service in compliance with the Commission's rules.

(b) *Rates, terms, and conditions.* The rates, terms, and conditions on which a capability is provided to an interconnected VoIP provider under paragraph (a) of this section shall be reasonable. For purposes of this paragraph, it is evidence that rates, terms, and conditions are reasonable if they are:

(1) The same as the rates, terms, and conditions that are made available to CMRS providers, or

(2) In the event such capability is not made available to CMRS providers, the same rates, terms, and conditions that are made available to any telecommunications carrier or other entity for the provision of 911 or E911 service.

(c) *Permissible use.* An interconnected VoIP provider that obtains access to a capability pursuant to this section may use that capability only for the purpose of providing 911 or E911 service in accordance with the Commission's rules.

[FR Doc. E9-15822 Filed 7-2-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 0809121213-9221-02]

RIN 0648-AX96

### Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

**SUMMARY:** This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) July 1, 2009. Comments on this final rule must be received no later than 5 p.m., local time on August 5, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AX96 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Fax: 206-526-6736, Attn: Gretchen Arentzen
- Mail: Barry Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Gretchen Arentzen.

Instructions: All comments received are a part of the public record and will