

of the FRFA.<sup>80</sup>

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

6. 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 rules adopted herein.<sup>81</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>82</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>83</sup> A “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>84</sup>

7. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this *Order*. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.<sup>85</sup> The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,<sup>86</sup> Paging,<sup>87</sup> and Cellular and Other Wireless Telecommunications.<sup>88</sup> Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

8. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in

<sup>80</sup>See *infra* paras. 20-21.

<sup>81</sup>5 U.S.C. §§ 604(a)(3).

<sup>82</sup>5 U.S.C. § 601(6).

<sup>83</sup>5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>84</sup>15 U.S.C. § 632.

<sup>85</sup>FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3, page 5-5 (May 2004) (*Trends in Telephone Service*). This source uses data that are current as of October 22, 2003.

<sup>86</sup>13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

<sup>87</sup>*Id.* § 121.201, NAICS code 517211.

<sup>88</sup>*Id.* § 121.201, NAICS code 517212.

its field of operation.”<sup>89</sup> 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.<sup>90</sup> 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.

9. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>91</sup> According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.<sup>92</sup> Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.<sup>93</sup> Thus, under this size standard, the majority of firms can be considered small.

10. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>94</sup> According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers.<sup>95</sup> Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.<sup>96</sup> In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.<sup>97</sup> Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees.<sup>98</sup> In addition, 37 carriers reported that they were “Other Local Exchange Carriers.”<sup>99</sup> Of the 37 “Other

---

<sup>89</sup>15 U.S.C. § 632.

<sup>90</sup>Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>91</sup>13 C.F.R. § 121.201, NAICS code 517110.

<sup>92</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517110.

<sup>93</sup>*Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

<sup>94</sup>13 C.F.R. § 121.201, NAICS code 517110.

<sup>95</sup>*Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Table 5.3 (May 2004) (*Trends in Telephone Service*).

<sup>96</sup>*Trends in Telephone Service*, Table 5.3.

<sup>97</sup>*Trends in Telephone Service*, Table 5.3.

<sup>98</sup>*Trends in Telephone Service*, Table 5.3.

<sup>99</sup>*Trends in Telephone Service*, Table 5.3.

Local Exchange Carriers,” an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.<sup>100</sup> Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and “Other Local Exchange Carriers” are small entities that may be affected by the rules and policies adopted herein.

11. *Incumbent Local Exchange Carriers (LECs).* We have included small incumbent local exchange carriers 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 operations.”<sup>101</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>102</sup> We therefore include small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>103</sup> According to Commission data,<sup>104</sup> 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 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 rules and policies adopted herein.

13. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and “Other Local Exchange Carriers.”* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to “Other Local Exchange Carriers,” all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>105</sup> According to Commission data,<sup>106</sup> 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.

<sup>100</sup>*Trends in Telephone Service*, Table 5.3.

<sup>101</sup>15 U.S.C. § 632.

<sup>102</sup>Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBC regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>103</sup>13 C.F.R. § 121.201, NAICS code 517110.

<sup>104</sup>*Trends in Telephone Service* at Table 5.3.

<sup>105</sup>13 C.F.R. § 121.201, NAICS code 517110.

<sup>106</sup>*Trends in Telephone Service* at Table 5.3.

Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.<sup>107</sup> In addition, 35 carriers reported that they were “Other Local Service Providers.” Of the 35 “Other Local Service Providers,” an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees.<sup>108</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and “Other Local Exchange Carriers” are small entities that may be affected by the rules and policies adopted herein.

14. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>109</sup> and “Cellular and Other Wireless Telecommunications.”<sup>110</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.<sup>111</sup> Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.<sup>112</sup> Thus, under this category and associated small business size standard, the great majority of firms can be considered small. 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.<sup>113</sup> 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.<sup>114</sup> Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

15. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services.<sup>115</sup> Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>116</sup> According to the most

<sup>107</sup>*Id.*

<sup>108</sup>*Id.*

<sup>109</sup>13 C.F.R. § 121.201, NAICS code 517211.

<sup>110</sup>13 C.F.R. § 121.201, NAICS code 517212.

<sup>111</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

<sup>112</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>113</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>114</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>115</sup>13 C.F.R. § 121.201, NAICS code 517212.

<sup>116</sup>13 C.F.R. § 121.201, NAICS code 517212.

recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of wireless telephony.<sup>117</sup> We have estimated that 245 of these are small under the SBA small business size standard.

16. *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.”<sup>118</sup> Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.<sup>119</sup> 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.<sup>120</sup> Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.<sup>121</sup> We have estimated that 245 of these are small, under the SBA small business size standard.<sup>122</sup>

#### **D. Description of Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities**

17. In this Order, the Commission adopts new rules that prohibit incumbent LECs from imposing non-access compensation obligations pursuant to tariff, and permit LECs to compel interconnection and arbitration with CMRS providers.<sup>123</sup> Under the new rules, CMRS providers and LECs, including small entities, must engage in interconnection agreement negotiations and, if requested, arbitrations in order to impose compensation obligations for non-access traffic.<sup>124</sup> The record suggests that many incumbent LECs and CMRS providers, including many small and rural carriers, already participate in interconnection negotiations and the state arbitration process under the current rules. For these carriers, our new rules will not result in any additional compliance requirements. For LECs that

<sup>117</sup>FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

<sup>118</sup>13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

<sup>119</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

<sup>120</sup>U.S. Census Bureau, 1997 Economic Census, Subject Series: “Information,” Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1000 employees or more.”

<sup>121</sup>FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

<sup>122</sup>FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

<sup>123</sup>See *supra* paras. 14-16.

<sup>124</sup>See *supra* para. 14 (prohibiting the use of tariffs to impose non-access compensation obligations).

have imposed compensation obligations for non-access traffic pursuant to state tariffs, however, the amended rules require that these LECs, including small entities, participate in interconnection negotiations and, if requested, the state arbitration process in order to impose compensation obligations. Conversely, the new rules obligate CMRS providers, including small entities, to participate in a negotiation and arbitration process upon a request by incumbent LECs.

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

18. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; 3) the use of performance rather than design standards; and 4) an exemption from coverage of the rule, or any part thereof, for small entities.”<sup>125</sup>

19. The Commission denies a petition for declaratory ruling filed by CMRS providers asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers.<sup>126</sup> The Commission considered and rejected a finding that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers because the current rules do not explicitly preclude such arrangements and these tariffs ensure compensation where the rights of incumbent LECs to compel negotiations with CMRS providers are unclear.<sup>127</sup> On a prospective basis, however, the Commission amends its rule to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.<sup>128</sup>

20. As a general matter, our actions in this Order should benefit all interconnected LECs and CMRS providers, including small entities, by facilitating the exchange of traffic and providing greater regulatory certainty and reduced litigation costs. Further, we directly address the concern of small incumbent LECs that they would be unable to obtain a compensation arrangement without tariffs by providing them with a new right to initiate a section 252 process through which they can obtain a reciprocal compensation arrangement with any CMRS provider.

21. The Commission considered and rejected the possibility of permitting wireless termination tariffs on a prospective basis.<sup>129</sup> Although establishing contractual arrangements may impose

<sup>125</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>126</sup> T-Mobile Petition at 1.

<sup>127</sup> See *supra* paras. 9-12.

<sup>128</sup> See *supra* paras. 14-16. See also *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9641-42, paras. 86, 89-90 (requesting comment on how interconnection between LECs and CMRS providers would “work” within the existing regulatory frameworks under sections 251 and 252 and section 332 of the Act).

<sup>129</sup> See *supra* para. 14.

burdens on CMRS providers and LECs, including some small entities, that do not have these arrangements in place, we find that our approach in the Order best balances the needs of incumbent LECs to obtain terminating compensation for wireless traffic and the pro-competitive process and policies reflected in the 1996 Act.<sup>130</sup> We also note that, during this proceeding, both CMRS providers and rural incumbent LECs have repeatedly emphasized their willingness to engage in a negotiation and arbitration process to establish compensation terms. In the Further Notice of Proposed Rulemaking adopted by the Commission on February 10, 2005, we seek further comment on ways to reduce the burdens of such a process.<sup>131</sup>

#### **F. Report to Congress**

22. The Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Declaratory Ruling and Report and Order, including this FRFA - or summaries thereof - will be published in the Federal Register.

---

<sup>130</sup>In particular, because a LEC may trigger the interim compensation requirements in section 51.715 of the Commission's rules, 47 C.F.R. § 51.715, simply by requesting interconnection with a CMRS provider, the threshold burden to obtain compensation under the amended rule is minimal.

<sup>131</sup>See *FCC Moves to Replace Outmoded Rules Governing Intercarrier Compensation*, CC Docket No. 01-92, News (rel. Feb. 10, 2005).