

methylpropyl)-25-(1-methylethyl) avermectin A<sub>1</sub>), and its delta-8,9-isomer in/on cattle, fat at 0.03 ppm; cattle, meat byproducts at 0.06 ppm; fruit, stone, group 12 at 0.09 ppm; goat, fat at 0.01 ppm; hog, fat at 0.01 ppm; horse, fat at 0.01 ppm; nut, tree, group 14 at 0.01 ppm; pistachio at 0.01 ppm; sheep, fat at 0.01 ppm; and vegetable, tuberous and corm subgroup 01C at 0.01 ppm.

Existing tolerances for cattle, fat and cattle, meat byproducts are revised. Existing individual crop tolerances on almond, plum, potato, and walnut are deleted and replaced by the establishment of new crop group tolerances. Existing tolerances on almond, hulls and plum, prune, dried are retained. The expression for existing mint tolerances is corrected by deleting the term mint and replacing with peppermint, tops at 0.010 ppm and spearmint, tops at 0.010 ppm.

**VI. Statutory and Executive Order Reviews**

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power

and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—AMENDED**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.449, the table to paragraph (a) is amended by revising the entries for cattle, fat and cattle, meat byproducts; by removing the entries for almond, plum, mint, potato and walnut; and by adding alphabetically, the remaining entries in the table to read as follows:

**180.449 Avermectin B<sub>1</sub> and its delta-8,9-isomer; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
* * * * *	*
Cattle, fat .....	0.03
Cattle, meat byproducts .....	0.06
* * * * *	*
Fruit, stone, group 12 .....	0.09
Goat, fat .....	0.01
* * * * *	*
Hog, fat .....	0.01
* * * * *	*
Horse, fat .....	0.01
* * * * *	*
Nut, tree, group 14 .....	0.01
* * * * *	*
Peppermint, tops .....	0.010
Pistachio .....	0.01
* * * * *	*
Sheep, fat .....	0.01
* * * * *	*
Spearmint, tops .....	0.010
Vegetable, tuberous and corm, subgroup 01C .....	0.01

\* \* \* \* \*

FR Doc. E9-19006 Filed 8-6-09; 8:45 am

BILLING CODE 6560-50-S

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 63**

[WC Docket No. 04-36; FCC 09-40]

**IP-Enabled Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission’s rules so that providers of interconnected Voice over Internet Protocol (VoIP) service will be required to comply with the same discontinuance rules as domestic non-dominant telecommunications carriers. These rules protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction or impairment of their service by requiring

prior notice to customers and the filing of an application with the Commission.

**DATES:** Effective September 8, 2009 except for §§ 63.60(a) and (f) which affect information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

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

Interested parties may submit PRA comments 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 [Rodney.McDonald@fcc.gov](mailto:Rodney.McDonald@fcc.gov). Please include WC Docket Number 04–36 and FCC No. 09–40 in the subject line of the message.

- *Mail:* Parties who choose to file by paper should submit their comments to Rodney McDonald, Federal Communications Commission, Wireline Competition Bureau, Room 6–A430, 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:**

Rodney McDonald, Wireline Competition Bureau, (202) 418–1580. 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. 04–36; FCC 09–40, adopted and released May 13, 2009. In this Order, the Commission extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under

section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned action with the Commission.

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 extending the Commission's discontinuance obligations to interconnected VoIP providers and find these changes warranted. The reasons for this conclusion are explained in more detail below.

*Report to Congress*

The Commission will send 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**.]

In this Order, the Commission extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned action with the Commission.

**Synopsis of Order**

1. On March 10, 2004, the Commission initiated a rulemaking proceeding to examine issues relating to IP-enabled services—services and applications making use of IP, including, but not limited to, VoIP services. In the *IP-Enabled Services Notice*, published at 69 FR 16193, March 29, 2004, the Commission sought comment on numerous issues, including whether to extend certain consumer protection obligations, such as the discontinuance obligations of section 214, to any class of IP-enabled service provider.

2. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services. Thus, in this Order, the Commission takes steps to protect consumers of interconnected VoIP service from the abrupt discontinuance, reduction, or impairment of their service without notice. Specifically, the Commission extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act of 1934, as amended (the Act). Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application

for authorization of the planned discontinuance with the Commission.

3. *Scope.* The exit certification requirements adopted in this Order apply to interconnected VoIP service and providers of such service. The Commission's rules in 47 CFR 9.3 define "interconnected VoIP service" as "a service that: (1) Enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." To date, the Commission has not classified interconnected VoIP service as a telecommunications service or information service as those terms are defined in the Act, and does not make that determination with this Order. In general, providers of facilities-based interconnected VoIP services and "over-the-top" interconnected VoIP services are subject to the rules in this Order. However, section 214 requirements are not extended to providers of interconnected VoIP services that are "mobile services" under the Act. If anything, these services would be more akin to Commercial Mobile Radio Service (CMRS) than to traditional wireline services. Therefore, for purposes of the rules at issue here, it makes more sense to treat providers of interconnected VoIP services that are mobile in the same way as CMRS providers, which are not subject to the Commission's section 214 discontinuance obligations. The Commission may revisit this issue if circumstances warrant, and in other contexts may decline to exempt these services from rules that apply to interconnected VoIP services generally.

4. As the Commission has found before, unlike certain other IP-enabled services, interconnected VoIP service increasingly is used as a replacement for traditional voice service. Customers therefore reasonably expect their interconnected VoIP service to include the regulatory protections that they would receive with traditional voice services. The Commission believes it is critically important that all customers of interconnected VoIP service receive the protections of the section 214 discontinuance requirements. Importantly, if customers were to lose their telephone service without sufficient notice, they would also lose access to 911 service—possibly with disastrous consequences. This Order, therefore, is consistent with, and a necessary extension of, the

Commission's prior exercises of authority to ensure public safety.

5. *Authority.* In this Order, the Commission concludes that it has authority under Title I of the Act to impose section 214 discontinuance obligations on providers of interconnected VoIP services. Ancillary jurisdiction may be employed, at the Commission's discretion, when Title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [its] various responsibilities." The Commission finds that both predicates for ancillary jurisdiction are satisfied here.

6. First, as the Commission previously has concluded, interconnected VoIP service falls within the subject matter jurisdiction granted to the Commission under the Act. Second, the Commission must evaluate whether imposing service discontinuance obligations on interconnected VoIP providers is reasonably ancillary to the effective performance of the Commission's responsibilities. As discussed further below, the Commission finds that sections 1 and 214 of the Act provide the requisite nexus, with additional support from section 706. Specifically, the Commission finds that extending the section 214 discontinuance procedures to interconnected VoIP service providers is "reasonably ancillary to the effective performance of [our] responsibilities" under these statutory provisions, and "will 'further the achievement of long-established regulatory goals'" to ensure that the public is not adversely affected by the discontinuance, reduction, or impairment of service.

7. The Commission finds that extending domestic discontinuance requirements to interconnected VoIP providers is reasonably ancillary to the Commission's effective performance of its responsibility to promote safety of life and property through the use of wire and radio communication. Section 1 of the Act charges the Commission with responsibility for making available "a rapid, efficient, Nation-wide, and world-wide wire and radio communication service \* \* \* for the purpose of promoting safety of life and property through the use of wire and radio communication." By extending the section 214 discontinuance procedures to interconnected VoIP providers, the Commission protects American consumers from the unanticipated and harmful consequences that could follow the loss of telephone service without sufficient notice. Most notably, as mentioned above, if an interconnected

VoIP provider discontinued service without notice, customers would lose the ability to call 911 through that service. In addition, extending the section 214 discontinuance rules to interconnected VoIP providers ensures customers' ability to transition to alternative service providers in an orderly fashion. The Commission thereby fosters "rapid, efficient, Nation-wide, and world-wide wire and radio communication service" by safeguarding the public interest in continuity of such services—irrespective of which provider makes those services available.

8. Section 214(a) of the Act states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby." The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service. The Commission finds that the extension of section 214 service discontinuance requirements to providers of interconnected VoIP service is reasonably ancillary to the effective performance of the Commission's duty to protect the public from the adverse effects of service discontinuances. The Commission already has found that interconnected VoIP service "is increasingly used to replace analog voice service"—a trend that the Commission expects will continue. From the perspective of a customer making an ordinary telephone call, the Commission believes that interconnected VoIP service is functionally indistinguishable from traditional telephone service. It therefore is reasonable for American consumers to have similar expectations for these services. In particular, the Commission finds it reasonable for customers of interconnected VoIP service to expect some advance notice before the discontinuance of their voice service, and notes that customers receiving traditional telephone service from wireline carriers are already entitled to such notice under the Commission's discontinuance requirements. By extending the Commission's discontinuance requirements to interconnected VoIP services, the Commission advances the public interest by helping ensure that such notice is actually given to customers that are making and receiving calls regardless of whether they are receiving service from a traditional

carrier or an interconnected VoIP provider.

9. The Commission is also guided by section 706 of the 1996 Act, which, among other things, directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that “promote competition in the local telecommunications market.” The assurance that providers of interconnected VoIP services are subject to service-discontinuance procedures comparable to those that apply to non-dominant carriers may spur consumer demand for those services, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.

10. *Interconnected VoIP Provider Discontinuance Obligations.* To protect customers from an abrupt discontinuance, reduction, or impairment of service without adequate notice, the Commission requires providers of interconnected VoIP service to comply with the same service discontinuance obligations as domestic non-dominant carriers. The Commission disagrees with commenters who assert that such action is unnecessary in light of competitive market conditions. Service discontinuance can be disruptive to all customers, regardless of whether their provider has market power or utilizes new technology. As the Commission has previously concluded with respect to other competitive telephone services, even customers with competitive alternatives need fair notice and information to choose a substitute service. Therefore, in order to protect customers of interconnected VoIP service from interrupted service and its associated consequences, providers of interconnected VoIP service must notify all affected customers of their plans to discontinue, reduce, or impair service, and must provide affected customers with an opportunity to inform the Commission of resultant hardships.

11. The Commission’s rules do not provide an exhaustive list of what constitutes the discontinuance, reduction, or impairment of service. In the context of interconnected VoIP service, the Commission finds that a discontinuance, reduction, or impairment of service would include, but is not limited to, the conversion of an interconnected VoIP service to one that permits only inbound, but not outbound, calls to the PSTN—or one that permits only outbound, but not inbound, calls to the PSTN.

12. By requiring interconnected VoIP providers to comply with the Commission’s streamlined domestic discontinuance requirements applicable to non-dominant carriers, the Commission balances the need to protect consumers with the goal, set forth in section 230 of the Act, of minimizing the regulation of the Internet and other interactive computer services. As the Commission previously has found, § 63.71 of the Commission’s rules strikes a good balance between the Commission’s dual objectives of permitting ease of exit from competitive markets and ensuring that the public will be given a reasonable period of time to make other service arrangements. The Commission therefore disagrees with commenters who argue that applying section 214 exit regulations to interconnected VoIP service will unduly deter market entry, distort the market, or depress investment in new technologies. On the contrary, as the Commission has stated previously, disparate treatment of entities providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.

13. It is important to note that the Commission does not impose any economic regulation on providers of interconnected VoIP service by this Order. Title II and the Commission’s rules subject all common carriers to a variety of *non-economic* regulations designed to further important public policy goals and protect consumers, and the Commission has stated previously that it “will not hesitate to adopt any non-economic regulatory obligations that are necessary to ensure consumer protection and network security and reliability in this dynamically changing broadband era.” Included among these are the obligations the Commission imposes, with this Order, on providers of interconnected VoIP service, which serve as important consumer protection measures. The Commission acknowledges that section 230 of the Act provides that “[i]t is the policy of the United States—to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” The Commission’s discussion of section 230 in *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03–211, Memorandum Opinion and Order, FCC 04–267, para. 35 (rel. Nov. 12, 2004) (*Vonage Order*) acknowledged this policy and cautioned against the

imposition of undue regulation by multiple jurisdictions, but was directed at “traditional common carrier economic regulations.” The Commission finds this order consistent with its previous decisions, and does not believe that the congressional policy statement in section 230 of the Act precludes the Commission from extending consumer protection obligations, such as the section 214 discontinuance obligations, to interconnected VoIP providers. The Commission also notes that the extension of discontinuance obligations to providers of interconnected VoIP services has no effect on the Commission’s preemption determinations in the *Vonage Order*.

14. The Commission amends the part 63 domestic discontinuance rules to encompass interconnected VoIP service. Accordingly, before an interconnected VoIP provider may discontinue, reduce, or impair service, it must provide all affected customers with written notice that includes the provider’s name and address, typically by postal mail to the customer’s billing address; the date of the planned service discontinuance, reduction, or impairment; the geographic areas where service will be affected; a brief description of the affected service; and the statement found in § 63.71(a)(5)(i) of the Commission’s rules. The Commission recognizes that because of the potentially portable nature of some interconnected VoIP services, there may be additional and/or alternative means of providing effective notice to customers of interconnected VoIP providers. As such, upon request, the Commission may authorize in advance another form of notice for good cause shown.

15. On or after the date it provides notice to its customers as specified above, the interconnected VoIP provider must file with the Commission an application for authorization of the planned discontinuance. The application shall identify that the provider is an interconnected VoIP provider seeking to discontinue, reduce, or impair interconnected VoIP services and shall include, in addition to the information set forth in the notice provided to affected customers, a caption, a brief description of the dates and methods of notice to all affected customers, and any other information the Commission may require. An interconnected VoIP provider shall also submit a copy of its application to the public utility commission and to the Governor of the State(s) in which it proposes to discontinue, reduce, or impair service, as well as to the

Secretary of Defense. In addition to providing existing customers with direct notice of a proposed discontinuance, providers seeking to discontinue, reduce or impair service to a community should copy the state public utility commissions (PUC) and governors' offices in the states where they no longer plan to offer services regardless of whether customers are currently subscribing to their service at the time of the application. The Commission believes this requirement will serve the public interest by, among other things, better enabling states to play an active role in customer notification efforts where circumstances warrant such involvement. The Commission recognizes that interconnected VoIP providers that offer service nationwide will need to notify every state PUC and governor's office before discontinuing service altogether. However, the Commission does not find this requirement to be unduly burdensome. In particular, notice to the states pursuant to § 63.71(a) only requires providing state officials with a copy of the discontinuance application. This simple notice should adequately inform states of the impending loss of previously available services to their communities in a minimally burdensome manner—using the same procedures that apply to other non-dominant providers that plan to discontinue nationwide offerings.

16. The application to discontinue, reduce, or impair service shall be automatically granted on the 31st day after the Commission releases public notice of the application unless the Commission notifies the applicant that the grant will not be automatically effective. Thus the Commission believes that interconnected VoIP providers will be faced with discontinuance requirements that are no more burdensome than the reduced requirements that already apply to competitive carriers, and that their customers will be afforded a reasonable time to make alternative service arrangements in the event of a discontinuance, reduction, or impairment of service. The Commission expects that providers of wholesale inputs will coordinate and continue to work with interconnected VoIP providers in the event that a discontinuance of service becomes necessary so that the discontinuance of service can occur in an orderly fashion consistent with this Order, the Commission's rules, and the interest of customers.

#### **Congressional Review Act**

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

#### **Final Paperwork Reduction Act of 1995 Analysis**

18. This document contains new or modified 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), the Commission previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

19. In this present document, we have assessed the effects of imposing domestic non-dominant discontinuance rules on providers of interconnected VoIP service, and find that these requirements do not place a significant burden on businesses with fewer than 25 employees.

#### **Final Regulatory Flexibility Analysis**

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *IP-Enabled Services Notice* in WC Docket No. 04–36. The Commission sought written public comment on the proposals in the *IP-Enabled Services Notice*, including comment on the IRFA. The Commission received comments specifically directed toward the IRFA from three commenters in WC Docket No. 04–36. These comments are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

21. This Order takes a series of steps designed to ensure that consumers of interconnected VoIP are afforded appropriate consumer protection measures consistent with the Communications Act of 1934, as amended (the Act). Today's telecommunications marketplace is one of rapidly changing technology, capability, and services. Since the Commission first described IP-enabled services nearly five years ago, the

American public has embraced them, resulting in the widespread adoption of mass market interconnected VoIP and broadband services by millions of consumers for voice, video, and Internet communications. Consumers increasingly use interconnected VoIP service as a replacement for traditional voice service, and as interconnected VoIP service improves and proliferates, consumers' expectations for this type of service trend toward their expectations for other telephone services.

22. This Order extends to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Act. Consequently, before an interconnected VoIP provider may discontinue service, it must comply with the streamlined discontinuance requirements under part 63 of the Commission's rules, including the requirements to provide written notice to all affected customers, notify relevant state authorities, and file an application for authorization of the planned discontinuance with the Commission.

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

23. In this section, the Commission responds to comments filed in response to the IRFA. To the extent the Commission received comments raising general small business concerns during these proceedings, those comments are discussed in the Order.

24. The Small Business Administration (SBA) comments that the Commission's *IP-Enabled Services Notice* does not contain concrete proposals and is more akin to an advance notice of proposed rulemaking or a notice of inquiry. The Commission disagrees with the SBA and Menard that the Commission should postpone acting in this proceeding, thereby postponing extending the application of the section 214 service discontinuance obligations to interconnected VoIP services. According to SBA and Menard, the Commission instead should reevaluate the economic impact and the compliance burdens on small entities and issue a further notice of proposed rulemaking in conjunction with a supplemental IRFA identifying and analyzing the economic impacts on small entities and less burdensome alternatives. The Commission believes these additional steps suggested by SBA and Menard are unnecessary because small entities already have received sufficient notice of the issues addressed in this Order, and because the Commission has considered the

economic impact on small entities and the feasibility of alternative approaches to minimize the burdens imposed on those entities.

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

25. 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.

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

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

1. Telecommunications Service Entities

a. Wireline Carriers and Service Providers

28. The Commission includes small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

29. *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 this action.

30. *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 are estimated to 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.

31. *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 this action.

32. *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 this action.

33. *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 this action.

b. Satellite Telecommunications and All Other Telecommunications

34. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules. The second has a size standard of \$25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in these categories.

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

36. The second category of All Other Telecommunications comprises, *inter alia*, "establishments primarily engaged in providing specialized

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by this action.

#### c. Wireless Telecommunications Carriers (Except Satellite)

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

38. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms 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. For the category of Wireless Telecommunications Carriers (except Satellite), data for 2002 show that there were 1,397 firms 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, the Commission estimates that the majority of wireless firms are small.

39. In the *Paging Third Report and Order*, published at 62 FR 15978, April 3, 1997, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The Commission also notes that, currently, there are approximately 74,000 Common Carrier Paging licenses.

40. *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.

41. *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 "Wireless Telecommunications Carriers (except Satellite)" 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. The Commission has estimated that 222 of these are small under the SBA small business size standard.

42. *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.

43. *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, published at 65 FR 35843, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction 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.

44. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Wireless Telecommunications Carriers (except Satellite)" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. 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.

45. *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*, published at 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for

"small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

46. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in

the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

47. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" 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. Subsequently, in the *700 MHz Second Report and Order*, the Commission reorganized the licenses pursuant to an agreement among most of the licensees, resulting in a spectral relocation of the first set of paired spectrum block licenses, and an elimination of the second set of paired spectrum block licenses (many of which were already vacant, reclaimed by the Commission from Nextel). A single licensee that did not participate in the agreement was grandfathered in the initial spectral location for its two licenses in the second set of paired spectrum blocks. Accordingly, at this time there are 54 licenses in the 700 MHz Guard Bands and there is no auction data applicable to determine which are held by small businesses.

48. *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.

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

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

\$40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

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

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

53. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard

for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concludes that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

54. *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*, published at 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under its rules in future auctions of 218–219 MHz spectrum.

55. *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 "Wireless Telecommunications Carriers (except Satellite)" companies. This

category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is 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.

56. *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

57. *Cable Television Distribution Services.* The “Cable and Other Program Distribution” census category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television 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. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of

services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

58. *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 fewer than 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.

59. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.

Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

60. *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, D.C. and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. The Commission thus believes that at least some of the OVS operators may qualify as small entities.

61. *Satellite Carriers.* The term “satellite carrier” includes entities providing services as described in 17 U.S.C. 119(d)(6) using the facilities of a satellite or satellite service licensed under part 25 of the Commission’s rules to operate in Direct Broadcast Satellite (DBS) or Fixed-Satellite Service (FSS) frequencies. As a general practice, not mandated by any regulation, DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to

provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license. Since 2007, the SBA has recognized satellite television distribution services within the broad economic census category of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. The most current Census Bureau data, however, are from the last economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both prior categories, such a business was considered small if it had \$13.5 million or less in average annual receipts.

62. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, the Commission relies on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts. Currently, only two operators—DirecTV and EchoStar Communications Corporation (EchoStar)—hold licenses to provide DBS service, which requires a great investment of capital for operation. Both currently offer subscription services and report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

63. *Fixed-Satellite Service (FSS).* The FSS is a radiocommunication service

between earth stations at a specified fixed point or between any fixed point within specified areas and one or more satellites. The FSS, which utilizes many earth stations that communicate with one or more space stations, may be used to provide subscription video service. Therefore, to the extent FSS frequencies are used to provide subscription services, FSS falls within the SBA-recognized definition of Wired Telecommunications Carriers. However, as discussed above, the Commission relies on the previous size standard, Cable and Other Subscription Programming, which provides that a small entity is one with \$13.5 million or less in annual receipts. Although a number of entities are licensed in the FSS, not all such licensees use FSS frequencies to provide subscription services. Both of the DBS licensees (EchoStar and DirecTV) have indicated interest in using FSS frequencies to broadcast signals to subscribers. It is possible that other entities could similarly use FSS frequencies, although the Commission is not aware of any entities that might do so.

### 3. Internet Service Providers

64. *Internet Service Providers.* The 2007 Economic Census places these providers, which include voice over Internet protocol (VoIP) providers, in the category of All Other Telecommunications. The SBA small business size standard for such firms is: those having annual average receipts of \$25 million or less. The most current Census Bureau data on such entities, however, are the 2002 data for the previous census category called Internet Service Providers. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities that may be affected by this action.

### 4. Other Internet-Related Entities

65. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category as including "establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals) \* \* \*. Establishments known as 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 small business size standard for such firms is: those having 500 or fewer employees. The most current Census Bureau data on such entities, however, are the 2002 data for the previous two separate categories of Internet Publishing and Broadcasting, and Web Search Portals entities. For the first previous category, the 2002 data show that there were 1,362 firms that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and 11 firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by this action. For the second previous census category of Web Search Portals, the SBA had developed a small business size standard of \$6.5 million or less in average annual receipts. According to the data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, the Commission estimates that the majority of Web Search Portals firms are small entities that may be affected by this action.

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

67. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." The Commission's action pertains to VoIP services, which could be provided by entities that provide other services such as 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, the Commission estimates that the majority of these firms are small entities that may be affected by this action.

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

68. In this Order, the Commission requires providers of interconnected VoIP service to take actions to comply with section 214 service discontinuance obligations. For example, to protect against abrupt termination of service, the Order requires providers of interconnected VoIP services to be subject to the same service discontinuance procedures as non-dominant carriers. Thus, the Commission requires that a provider of interconnected VoIP service seeking to discontinue service provide all affected customers with notice of the planned discontinuance of service. Specifically, the Order requires an interconnected VoIP provider to provide all affected customers with its name and address, the date of the planned service discontinuance, the geographic areas where service will be discontinued, a brief description of the service to be discontinued, and the statement found in § 63.71(a)(5)(i) of the Commission's rules. The Order requires written notice to be provided to each affected customer, but allows the Commission to authorize in advance another form of notice for good cause shown upon request.

69. The Order also requires an interconnected VoIP provider to file with the Commission an application for authorization of the planned discontinuance. The application shall identify that the provider is an interconnected VoIP provider with respect to the service to be discontinued and shall include, in addition to the information set forth in the notice provided to affected customers, a caption, a brief description of the dates and methods of notice to all affected customers, and any other information the Commission may require. The Order also requires an interconnected VoIP provider to submit a copy of its application to the public utility commission and to the Governor of the State(s) in which it proposes to discontinue, reduce, or impair service, as well as to the Secretary of Defense.

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

70. 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.

71. The *IP-Enabled Services Notice* sought comment on whether to extend consumer protections afforded in the Act to subscribers of VoIP or other IP-enabled services, and invited comment on the effect on small entities. The Commission must assess the interests of small businesses in light of the overriding public interest in protecting consumers from interrupted voice service and its associated consequences.

72. In the Order, the Commission found that allowing customers of interconnected VoIP services to receive the benefits of section 214 discontinuance procedures is fundamentally important for the protection of consumers. Specifically, the Commission found that extending section 214 discontinuance procedures to interconnected VoIP service customers is necessary to protect consumers from abrupt and unexpected telecommunications service interruptions. As the Commission stated, even customers with competitive alternatives need fair notice and information to choose a substitute service. The Commission thus found that notice of proposed service discontinuances is important for the protection of all customers of interconnected VoIP providers, including those of small businesses. In considering whether to impose section 214 service discontinuance obligations on interconnected VoIP providers, the Commission considered several alternatives, including imposing streamlined obligations for dominant and non-dominant carriers and separate notice provisions. The Commission concluded that imposing the minimal streamlined obligations for non-dominant carriers on interconnected VoIP providers was appropriate, striking a good balance between the Commission's dual objectives of

permitting ease of exit from competitive markets and ensuring that the public will be given a reasonable period of time to make other service arrangements. The Commission further concluded that given that these same minimal requirements were imposed on non-dominant carrier small entities and did not result in any hardship, imposing these requirements on all interconnected VoIP providers, including providers that may be small entities, would be appropriate.

#### **Ordering Clauses**

73. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j), 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) through (j), 214, 303(r), that the Report and Order in WC Docket No. 04–36 *is adopted* and part 63 of the Commission's rules, 47 CFR part 63, *is amended* as set forth in Appendix B.

74. *It is further ordered* that, pursuant to §§ 1.103(a) and 1.427(a) of the Commission's rules, 47 CFR 1.103(a), 1.427(a), this Report and Order *shall be effective* September 8, 2009. However, the information collection requirements contained in the Report and Order will become effective following Office of Management and Budget (OMB) approval.

75. *It is further ordered* that the Commission's Consumer & 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 63**

Cable television, Communications, Communications common carriers, Discontinuance of service, IP-enabled services, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone, Voice over Internet Protocol, VoIP.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### **Final Rules**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 63 as follows:

**PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

■ 1. The authority citation for part 63 continues to read as follows:

**Authority:** Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 2. Section 63.60 is amended by redesignating paragraph (d) as paragraph (g); redesignating paragraph (c) as paragraph (e); redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and adding paragraphs (a), (b)(3), (d), and (f) to read as follows:

**§ 63.60 Definitions.**

\* \* \* \* \*

(a) For the purposes of §§ 63.60 through 63.90, the term “carrier,” when used to refer either to all telecommunications carriers or more specifically to non-dominant telecommunications carriers, shall include interconnected VoIP providers.

(b) \* \* \*

(3) The conversion of an interconnected VoIP service to a service that permits users to receive calls that originate on the public switched telephone network but not terminate calls to the public switched telephone network, or the converse.

\* \* \* \* \*

(d) The term “interconnected VoIP provider” is an entity that provides interconnected VoIP service as that term is defined in § 9.3 of this chapter.

\* \* \* \* \*

(f) For the purposes of §§ 63.60 through 63.90, the term “service,” when used to refer to a real-time, two-way voice communications service, shall include interconnected VoIP service as that term is defined in § 9.3 of this chapter but shall not include any interconnected VoIP service that is a “mobile service” as defined in § 20.3 of this chapter.

\* \* \* \* \*

[FR Doc. E9–18716 Filed 8–6–09; 8:45 am]

**BILLING CODE 6712–01–P**

**GENERAL SERVICES ADMINISTRATION**

**48 CFR Part 502**

[GSAR Amendment 2009–10; GSAR Case 2008–G501 (Change 38) Docket 2009–0012; Sequence 1]

**RIN 3090–AI90**

**General Services Administration Acquisition Regulation; GSAR Case 2008–0501, Rewrite of Part 502, Definitions of Words and Terms**

**AGENCIES:** General Services Administration (GSA), Office of the Chief Acquisition Officer.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR Part 502 that provide definitions for general words and terms. This section will only contain definitions for terms that are used in more than one place in the GSAR.

**DATES:** *Effective Date:* August 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, (202) 501–4755. Please cite Amendment 2009–10, GSAR case 2008–G501 (Change 38).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The GSA is amending the GSAR to update the text addressing GSAR 502.101, Definition of Words and Terms. This rule is a result of the GSA Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR, and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can use when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 502. The rule revises Part 502 to update the text addressing GSAR 502.101, Definition of Words and Terms. The section was changed to reflect the merger of the Federal

Technology Service and Federal Supply Service; creation of the Federal Acquisition Service; and deletion of the title Deputy Associate Administrator of Acquisition Policy, and introduction of Deputy Chief Acquisition Officer. No additional definitions were added. The GSA is publishing this as a final rule. The changes are considered administrative.

*Discussion of Comments*

The GSA published an Advance Notice of Proposed Rulemaking (ANPR) with request for comments at 71 FR 7910 on February 15, 2006. The comments have been addressed in previous **Federal Register** Notices (FRN) based on the part to which the comment referred. Remaining comments that were not addressed in previous FRN are being addressed here. Following are five comments.

1. Comment

One comment was received from numerous small businesses stating that they believe the GSAR may unnecessarily impose an adverse significant economic impact on a substantial number of small entities and is concerned that any changes GSA might propose will fail to address the biggest problem affecting small business today. The commenter further states that GSA policies must address the major problems that continue to allow this to happen. The commenter’s main concern is that there is not enough oversight at the Federal level and large businesses have been finding loopholes that result in small business contracts not getting their fair share of Federal Government small business contracts. The commenter further states that GSA policies must address the major problems that continue to allow this to happen and that GSA propose policies to ensure that 23 percent of Federal contracts go to legitimate small businesses, as the law requires.

*Response*

The GSA non-concurs. The comment is outside the scope of the GSAM. The U.S. Government Accountability Office has the primary oversight for fraud, abuse and loopholes. Further, the GSA is only one agency that contributes to the government-wide statutory 23 percent goal. GSA continually exceeds the 23 percent goal.

2. Comment

Another commenter recommended that the GSAR be revised to provide that contractors may apply general and administrative costs (G&A) to travel costs and other direct changes in