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Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided above. The Commission will send a copy of the *FNPRM* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

6. On a petition for review, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on January 21, 2003, remanded the *Second Order on Reconsideration* in this proceeding. The *Second Order on Reconsideration* had amended the Commission's payphone compensation rules. The D.C. Circuit did not address the merits of these rules, but instead found that the Commission had violated the Administrative Procedure Act (APA) in adopting them.

7. In the *Second Order on Reconsideration* in this proceeding, the Commission found that payphone service providers (PSPs) were not receiving fair compensation when a switch-based long distance reseller completed a payphone-originated call. The Commission found that, prior to the adoption of the order, there was confusion in the marketplace as to which facilities-based carrier—the interexchange carrier (IXC) or the switch-based reseller—was responsible for tracking payphone-originated calls to completion and compensating the PSP (switchless resellers are not required to track calls or compensate the PSP). The Commission also found that, because of the way telephone calls are switched, PSPs do not have the ability to track calls to completion. Thus, the Commission, in the *Second Order on Reconsideration* in this proceeding, amended its rules to specify that the first IXC to receive a payphone call from a local exchange carrier (LEC) was responsible for tracking the call to

completion and for compensating the PSP for the call. The first IXC was also required to prepare reports of completed payphone calls so that the PSPs could verify that they were being adequately compensated. The Commission permitted the IXC to then seek reimbursement from its switch-based reseller customer for both the payment to the PSP and its expenses in tracking and preparing tracking reports.

8. The overall objective of this *FNPRM* is to ensure that PSPs receive fair per-call compensation pursuant to section 276 of the Act. In this regard, the *FNPRM* asks whether the Commission should retain the PSP compensation rules adopted in the *Second Order on Reconsideration* or whether any alternative rules should be adopted to address PSP problems in receiving fair compensation.

Legal Basis

9. The legal basis for any action that may be taken pursuant to the *FNPRM* is contained in sections 1, 4(i), 4(j), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 276, and §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

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

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

11. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the most recent *Telephone Trends Report* data, 1,335 incumbent

local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that 1,037 or fewer providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

12. *Competitive Local Exchange Carriers*. Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 297 providers of competitive local exchange service are small entities that may be affected by the rules.

13. *Competitive Access Providers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most