

251(c), the *UNE Remand Order* “erected a new barrier to entry” by small business carriers, and consequently violated section 257 of the Communications Act. Section 257, however, did not mandate this proceeding and in no way cabins this Commission’s exercise of its authority to adopt rules implementing the Act. Section 257 required the Commission to conduct a proceeding designed to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services” within 15 months of the enactment of the 1996 Act, and periodically to review its regulations and report to Congress on any such barriers. The Commission concluded the requisite proceeding in 1997 and issued its first subsequent section 257 Report to Congress in 2000. Thus, this proceeding is *not* mandated (or in any way governed) by section 257. Rather, as described above, this Order fulfills the Commission’s commitment—set forth in the *UNE Remand Order*—to reevaluate unbundling requirements, and responds to various judicial rulings regarding those requirements.

81. TeleTruth, the NFIB, and SBA Advocacy caution that this Order may stand in violation of Executive Order 13272. Setting aside the question of whether a multi-member independent agency such as the FCC must comply with that Executive Order, it notes that affected agencies must: (1) Comply with the RFA, (2) give SBA Advocacy advanced notice of any proposed rules that might substantially impact small businesses, and (3) give “appropriate consideration to” and provide a written response to “any comments provided by” SBA Advocacy. Here, the Commission did send SBA Advocacy a copy of the published *NPRM* (which pre-dated the Executive Order). Moreover, in this FRFA, we fully satisfy our obligations under the RFA. Finally, we address SBA Advocacy’s other comments below. Therefore, this proceeding stands in compliance with Executive Order 13272.

82. SBA Advocacy argues that the Commission’s IRFA “did not consider the impact of delisting unbundled network elements * * * on small competitive local exchange carriers.” While SBA Advocacy recommends that we issue a revised IRFA to account more fully for the impact our rules might have on competitive LECs, it recognizes that we might appropriately address any such impact in this FRFA instead. The Commission has adopted the latter course. It notes that we have considered the concerns of competitive LECs

throughout this Order, and those considerations are summarized in Part X.A.5, below. Moreover, in Part X.A.3, we attempt to estimate the number of competitive LECs that will be affected by the rules we adopt herein.

83. SBA Advocacy also claims that the proposals contained in the *NPRM* were not sufficiently specific to allow small businesses the opportunity to comment meaningfully. The Commission disagrees. This proceeding has elicited well over one thousand filings, submitted by scores of parties. These parties—which include numerous small businesses—found in the *NPRM* sufficient specificity to permit meaningful comment. SBA Advocacy notes its “particular concern” that the Commission “is considering removing elements from the list” of incumbent LECs’ unbundling obligations, whereas the *NPRM* purportedly gave no indication of this eventuality. The *NPRM* clearly explained that the Commission was considering “an unbundling analysis that is more targeted,” including approaches “that take into consideration specific services, facilities, and customer and business considerations.” It expressly sought comment “on applying the unbundling analysis to define the network elements” subject to unbundling, and indicated our intention to “probe whether and to what extent we should adopt a more sophisticated, refined unbundling analysis.” The Commission officially stated its intention to reexamine unbundling obligations with respect to loops, switching, interoffice transport, OSS, call-related signaling and call-related databases. It is thus not persuaded that the *NPRM* somehow failed to signal our intent to examine rules that might result in modification of the list of elements (including possible removal of elements) subject to section 251(c)(3)’s unbundling requirements.

Description and Estimate of the Number of Small Entities to Which the Actions Taken Will Apply

84. 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 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).

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

86. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wired telecommunications carrier having 1,500 or fewer employees), and “is not dominant in its field of operation.” SBA 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 it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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

88. *Incumbent LECs*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA