

total, 2,659 firms had annual receipts of \$9,999,999 or less, and an additional 67 had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

115. Pursuant to sections 251(c) and (d) of the Act, incumbent LECs, including those that qualify as small entities, are required to provide nondiscriminatory access to UNEs. The only exception to this rule applies to qualifying rural carriers that have gone through the process of obtaining an exemption, suspension, or modification pursuant to section 251(f) of the Act. This Order represents, in large part, a fresh examination of the issues presented in implementing the unbundling requirements of section 251, based on comments from interested parties responding to the *NPRM*. This Order also interprets the necessary and impair standards of section 251(d)(2) in a manner that satisfies the D.C. Circuit's directives that (1) the Commission eschew broad national standards in favor of more granular analysis, and that, (2) in determining whether a carrier is "impaired" by diminished access to a given element, the Commission distinguish between "cost disparities that are universal as between new entrants and incumbents in any industry" and disparities resulting specifically from the conditions of natural monopoly that the Act is designed to redress.

116. In this Order, we determine that requesting carriers (1) are impaired without access to local circuit switching in providing service to mass market customers using DS0 capacity loops; (2) are not impaired without access to unbundled local circuit switching for the provision of service to enterprise customers using DS1 and higher capacity loops; (3) are not impaired without access to packet switching, including routers and DSLAMs; (4) are not impaired without access to incumbent LECs' signaling systems except where they are also impaired without access to the incumbent LEC's unbundled circuit switching; (5) are impaired without unbundled access to the incumbent LEC's 911 and e911 databases; (6) are not impaired without access to the incumbent LEC's other call-related databases if they deploy their own switches, but otherwise are impaired; (7) are impaired without access to incumbent LECs' OSS; (8) are impaired without access to copper loop or subloop facilities (and must

condition copper loops for provision of advanced services), but are not impaired without access to line-sharing (subject to a three-year transition) or hybrid loops; (9) are not impaired without access to new build/greenfield fiber-to-the-home (FTTH) loops for broadband or narrowband services or overbuild/brownfield FTTH loops for broadband services; (10) are not impaired without unbundled access to OCn capacity loop facilities, but are impaired, subject to certain triggers, without access to dark fiber loops, DS1 loops, and DS3 loops; (11) are impaired without access to unbundled subloops associated with accessing customer premises wiring at multiunit premises and are also impaired without unbundled access to the incumbent LEC Inside Wire Subloops and NIDs, regardless of loop type; (12) are not impaired without unbundled access to OCn transport facilities, but are impaired, subject to certain triggers, without access to dark fiber transport facilities, DS1 transport facilities, and DS3 transport facilities; and (13) are impaired without access to unbundled shared transport only to the extent they are impaired without access to local circuit switching. The Order also affirms that incumbent LECs are obligated to provide access to UNE combinations.

117. In this Order, the Commission adopts rules to implement a congressionally-mandated scheme, embodied in section 251 of the Act, that imposes upon incumbent LECs an obligation to provide unbundled access to certain network elements. This Order articulates a new impairment standard to govern which network elements incumbent LECs must unbundle for competitors in accordance with the Act. While this Order imposes no general obligations on competitive LECs, the Order does require competitive LECs to satisfy certain reporting requirements in order to obtain as UNEs certain high-capacity network elements from incumbent LECs. We have attempted to keep the obligations imposed by this Order to the minimum necessary to implement the requirements of the Act.

118. In addition, this Order outlines procedures whereby states may conduct proceedings to determine whether certain network elements satisfy our impairment standard according to specific guidelines and triggers, as outlined in the Order. While this Order does not specifically impose any obligations on carriers in this regard, records regarding facility use may be necessary for these state proceedings.

119. The various compliance requirements contained in this Order will require the use of engineering,

technical, operational, accounting, billing, and legal skills. The carriers that are affected by these requirements already possess these skills. This Order contains new or modified information collections, which are subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

121. In this Order, the Commission adopts rules regarding the unbundling of network elements. It has modified our impairment analysis to find that a requesting carrier is impaired when lack of access to a facility in the incumbent LEC's network poses barriers that are likely to make entry into the market uneconomic. These can include both operational and economic barriers, such as scale economies, sunk costs, first mover advantages, absolute cost advantages, and barriers within the control of the incumbent LEC. In adopting this interpretation, the Commission considered a variety of factors relating to the size of regulated entities and the customers they serve. It considered a number of barriers to competitive entry, including those faced by small competitors, as well as the importance of scale economies as they relate to small entities. Finally, the Commission considered and rejected a number of suggested approaches to impairment.

122. In applying its impairment analysis to specific network elements, the Commission adopts a more granular approach, including the considerations of customer class, geography, and service. The Commission found that conducting a more granular analysis permits it to distinguish, with more particularity, those situations for which there is impairment from those for which there is none. It also found that an even more granular analysis—loop by loop, for example—is neither