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Federal Communications Commission
Washington, D.C. 20554

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NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on modifying Letter of Credit (LOC) rules for Universal Service Fund High Cost support authorized through a competitive process.

certain aspects of the LOC rules permanent for recipients of Connect America Fund Phase II (CAF II) support to align with the RDOF LOC requirements. We are seeking comment in these areas to explore potential ways to facilitate providers' compliance with program requirements while facilitating broadband deployment in unserved and underserved areas, and helping providers to meet their deployment milestones.

2. Currently, our rules require that entities authorized to receive High Cost support authorized through a competitive process have an LOC from a United States bank with a Weiss bank safety rating of B- or better.¹ When the Commission first adopted this rule, approximately 3,600 banks qualified to issue letters of credit. In the last 2 years, however, nearly half of those banks have lost their eligibility to issue LOCs as they have seen their Weiss rating fall below a B-.² Therefore, many carriers authorized to receive Connect America Fund Phase II Auction or Rural Digital Opportunity Fund support face the possibility of having their support withheld until they obtain a new LOC from a qualifying bank, and these carriers must incur increased costs and administrative burdens associated with obtaining a new LOC from a qualifying bank.³ We accordingly seek comment on whether the Commission should modify the current requirement of a B- or better Weiss safety rating.

3. In addition, RDOF support recipients are required to maintain LOCs that increase in value on an annual basis.⁴ Banks issuing LOCs generally require RDOF support recipients to maintain sufficient cash reserves to support the LOC, which impacts the financial resources available for the provider's operations, including deployment.⁵ As part of RDOF's rules, support recipients that meet their optional or required deployment milestone are allowed to reduce the value of their required LOCs to one year of their total support once USAC has verified deployment.⁶ This flexibility was intended to balance our responsibility to protect program funds while simultaneously reducing the financial burdens on RDOF support recipients to participate in the program as they met their deployment milestones.⁷ In this NPRM, we seek comment on providing additional flexibility by allowing an RDOF support recipient to lower the value of its LOC to one year of support if it has deployed service to 10 percent of its locations by the end of its second year of support, instead of 20 percent, and we seek comment on whether such a waiver would apply to recipients whose two-year optional milestone has already occurred.⁸

¹ 47 CFR §§ 54.315(c)(2)(i)(B) (Connect America Fund Phase II Auction or Auction 903); 54.804(c)(2)(i)(B) (Rural Digital Opportunity Fund or Auction 904); 54.1016(a)(2)(i)(B) (5G Fund); 54.1508(c)(1)(ii) (Stage 2 fixed support for the Uniendo a Puerto Rico Fund and the Connect USVI Fund).

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 24-244, at 3, para. 6 (WCB Mar. 12, 2024) (*Weiss Waiver Order*).

³ *See, e.g.*, Petition for Temporary Waiver of ECFiber, WC Docket No. 10-90, AU Docket No. 20-34, at 6 (filed Apr. 17, 2023) (*ECFiber Petition*) (explaining that, absent a waiver, ECFiber would need to have nearly \$500,000 tied up in Certificates of Deposit with banks that could no longer issue an RDOF LOC).

⁴ 47 CFR §§ 54.804(c)(1)(i)-(iv).

⁵ *See, e.g.*, Petition of the Coalition of RDOF Winners for Waiver, WC Docket No. 10-90 et al., at 10 (filed Aug. 16, 2023) (*Coalition of RDOF Winners' Petition*) ("Banks generally require these standby letters of credit to be cash collateralized, meaning that the RDOF recipients have to tie up a significant portion of their free cash in support of these letters of credit.").

⁶ 47 CFR § 54.804(c)(1)(v).

⁷ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 729, para. 97 (2020) (*Rural Digital Opportunity Fund Order*).

⁸ RDOF support recipients who began receiving support in 2021 had until December 31, 2023 to deploy service to 20% of their locations if they wished to take advantage of the optional milestone. Those recipients' first deployment obligation will be on December 31, 2024, at which point they will need to have deployed service to 40% of their locations. *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 711, 730, paras. 53, 99; 47 CFR § 54.802(c)(1).

4. Finally, we seek comment on making our waiver of certain aspects of the CAF II LOC rules permanent, and thereby continuing to allow CAF II support recipients that have met their deployment and reporting obligations to follow the RDOF's LOC rules, and maintain LOCs at lower values.

II. BACKGROUND

5. In 2016, the Commission adopted rules to implement a competitive bidding process to allocate support for Phase II of the Connect America Fund (Auction 903).⁹ In order to be authorized to receive support in Auction 903, winning bidders needed to make a detailed showing that they would be financially and technically capable of meeting their public interest obligations in the areas where they won support. One component of demonstrating financial capacity was obtaining an LOC from an eligible bank, which the Universal Service Administrative Company (USAC or Administrator) could draw on, should the need arise.¹⁰ The LOC requirement acts to protect the government's interest in the funds it disburses,¹¹ and it is an "effective means for accomplishing our role as stewards of the public's funds by securing our financial commitment to provide Connect America support in the auction context."¹²

6. The Commission also set out several requirements for a bank that would be eligible to issue these LOCs. As relevant here, the Commission required that any United States bank issuing the required LOC to an Auction 903 support recipient must maintain a Weiss bank safety rating of a B- or higher.¹³ This requirement struck a balance between providing "independent assurance of the safety and the soundness of the bank issuing a letter of credit," and expanding the pool of banks that would be eligible to issue these LOCs.¹⁴ The Commission noted that, in contrast with the rules it had adopted in 2014 for the Rural Broadband Experiments,¹⁵ which would have allowed only approximately 70 banks to issue LOCs, the adopted LOC rules for Auction 903 would allow approximately 3,600 banks to issue LOCs, and this expanded pool of eligible banks would facilitate auction participation from small entities across the Nation while still providing adequate protection for public funds.¹⁶ By adopting independent and objective criteria to evaluate a U.S. bank's suitability to issue an LOC, the Commission ensured that it would not be required to independently evaluate the financial health of different banks. For a support recipient to use a non-U.S. bank, which are not rated by Weiss, to secure a LOC, the bank, among other requirements, must have "a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's."¹⁷

⁹ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (*CAF Phase II Auction Order*).

¹⁰ *Id.* at 5951, para. 2.

¹¹ *Id.* at 5989, para. 118.

¹² *Id.* at 5990, para. 120, and *see id.* (discussing how alternatives to LOCs do not "offer the same level of protection of ratepayers' contributions to the universal service fund").

¹³ *CAF Phase II Auction Order*, 31 FCC Rcd at 5992-94, paras. 126-27; 47 CFR §§ 54.315(c)(2)(i)(B); 54.804(c)(2)(i)(B).

¹⁴ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993-94, para. 127.

¹⁵ *See Connect America Fund: ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8790, para. 59 (2014) (*Rural Broadband Experiments Order*) (setting forth the requirements that U.S. banks issuing LOCs for RBE participants must (1) be among the largest 100 banks in the U.S. and (2) have a credit rating issued by Standard & Poor's of BBB- or better (or the equivalent from a nationally recognized credit rating agency)).

¹⁶ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

¹⁷ *Id.* at 5996, para. 131; 47 CFR § 54.315(c)(2)(iv)(C).

7. In 2020, the Commission initiated its next reverse auction for fixed broadband support, the Rural Digital Opportunity Fund (RDOF) Auction (Auction 904).¹⁸ When adopting the rules governing a U.S. bank's eligibility to issue the required LOC to an Auction 904 support recipient, the Commission adopted the same bank eligibility requirement it had used in Auction 903.¹⁹ At the same time, the Commission made changes to other aspects of the LOC rules. In particular, the Commission reduced the value of the LOC that an RDOF support recipient was required to obtain and maintain as compared to the requirements applied for CAF II, and it allowed RDOF support recipients to reduce the value of their LOCs at an earlier point than CAF II support recipients were permitted.²⁰

8. In June 2020, in response to the COVID pandemic, the Wireline Competition Bureau waived the CAF II LOC rules, and allowed CAF II support recipients to follow the RDOF LOC rules instead.²¹ This waiver permitted CAF II support recipients to reduce their letter of credit burden sooner in their buildout term, as compared to requirements in the CAF II rules. That waiver has been renewed on an annual basis for CAF II support recipients who have met their deployment obligations.²²

9. In October 2020, the Commission established the 5G Fund for Rural America, adopting rules to use multi-round reverse auctions to distribute universal service support for high-speed, 5G mobile broadband services. Consistent with the requirements it adopted for CAF Phase II and RDOF, the Commission required all long-form applicants to obtain an LOC issued by a bank acceptable to the Commission in order to be authorized to receive support.²³ For letters of credit issued by United States banks, the Commission required the bank to be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B- or higher.²⁴

10. Since 2023, multiple banks that issued the required letters of credit to winning bidders authorized to receive support for Auctions 903 and 904 have had their Weiss bank safety ratings fall below a B-. In fact, more than 1,600 U.S. banks that had previously been eligible to issue LOCs to support recipients have seen their Weiss bank safety ratings fall below a B- in the past two years and,

¹⁸ See *Rural Digital Opportunity Fund Order*.

¹⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107; 47 CFR § 54.804(c)(2)(i)(B). The Commission also adopted the same rule requiring non-U.S. banks to have a "long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's." 47 CFR § 54.804(c)(2)(iv)(C).

²⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729, 730, paras. 98, 101.

²¹ *Connect America Fund; ETC Annual Reports and Certification; Rural Broadband Experiments; Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Order, 35 FCC Rcd 6556 (2020) (*Letter of Credit Waiver Order*) (waiving 47 CFR § 54.315(c) and instead directing CAF II funding recipients to comply with the 47 CFR 54.804(c) LOC rules for RDOF obligations).

²² See *Connect America Fund, et al., Order*, 36 FCC Rcd 16633 (WCB 2021) (*2021 LOC Waiver Extension*); *Connect America Fund, et al., Order*, 37 FCC Rcd 14592 (WCB 2022) (*2022 Letter of Credit Waiver Extension Order*); *Connect America Fund, et al., Order*, DA 23-1140 (WCB Dec. 6, 2023) (*2023 LOC Waiver Extension*).

²³ *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12263-69, paras. 225-44 (2020), modified by *Errata* released Nov. 10, 2020, Nov. 27, 2020, and Jan. 11, 2021 (*5G Fund Report and Order*).

²⁴ See 47 CFR § 54.1016(a)(2)(i). Non-U.S. Banks may issue LOCs to 5G Fund support winners, subject to the same rules established for Auctions 903 and 904. 47 CFR § 54.1016(a)(2)(iv); *5G Fund Report and Order*, 35 FCC Rcd at 12264, para. 226. In September 2023, the Commission adopted a Further Notice of Proposed Rulemaking for the 5G Fund seeking comment on, among other things, the 5G Fund budget, determining areas eligible for support, and requirements concerning cybersecurity, supply chain risk management plans, and Open Radio Access Networks. See *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Further Notice of Proposed Rulemaking, FCC 23-74, 2023 FCC LEXIS 2941 (2023).

correspondingly, lost their eligibility to supply support recipients with LOCs.²⁵ When its bank loses eligibility to supply an LOC,²⁶ the auction winner authorized to receive support faces the prospect of support being withheld until it can obtain a new LOC from a qualifying bank.²⁷

11. Since 2023, a number of CAF II and RDOF support recipients have requested a temporary waiver of the requirement to have an LOC from a United States bank with a Weiss bank safety rating of B- or better because their original bank no longer meets this standard, requiring them to obtain a new LOC from a qualifying bank. In recognition of the time needed to obtain a new LOC from a different bank and the burdens on carriers whose support would otherwise be withheld, the Wireline Competition Bureau (Bureau) has granted these waiver requests,²⁸ thereby allowing those recipients to maintain an existing LOC at the required value²⁹ and continue to receive support while they go through the process of obtaining a new LOC.

12. Other interested parties have raised concerns about the reliability of the Weiss ratings. The Bank Policy Institute stated that “the Weiss Ratings methodology is opaque and the Weiss organization appears to lack sufficient resources to adequately assess all of the institutions it purports to rate.”³⁰ The Wisconsin Bankers Association asserted that Weiss is “not a nationally recognized statistical rating organization (“NRSRO”) that is registered with the U.S. Securities and Exchange Commission,” and that Weiss’s analysis appears to be “questionable, irresponsible, and [lacking in] any form of transparency.”³¹

13. In March 2024, the Bureau issued an order temporarily waiving for one year, *sua sponte*, the requirement that banks issuing LOCs for such recipients maintain a Weiss bank safety rating of B- or

²⁵ *Weiss Waiver Order* at 3, para. 6.

²⁶ *Id.*

²⁷ *CAF Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107. See also 47 CFR §§ 54.315(c)(1), (4); 54.804(c)(1), (4); 54.1016. See also *CAF Phase II Auction Order*, 31 FCC Rcd at 5997, para. 133 (discussing the need to “secure a letter of credit from another issuing bank that meets our eligibility requirements”); *5G Fund Report and Order*, 35 FCC Rcd at 12266, para. 234.

²⁸ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 37 FCC Rcd 10271 (WCB 2022) (*Point Broadband Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 38 FCC Rcd 4336 (WCB 2023) (*ECFiber Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-513 (WCB June 14, 2023) (*DoCoMo Order*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 21-93, Public Notice, DA 23-756, at 22 & n.52 (WCB Aug. 31, 2023) (*August 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 23-1104, at 12 & n.39 (WCB Dec. 1, 2023) (*December 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-1, at 8 & n.25 (WCB Jan. 2, 2024) (*January 2024 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-85, at 7 & n.24 (WCB Feb. 1, 2024) (*February 2024 Streamlined Public Notice*).

²⁹ 47 CFR §§ 54.315(c)(1); 54.804(c)(1).

³⁰ Letter from Joshua Smith, Vice President, Assistant General Counsel, Bank Policy Institute to The Honorable Jessica Rosenworcel, Chairwoman, FCC, WC Docket Nos. 17-182 and 20-34, at 2 (filed Apr. 10, 2024) (*BPI Letter*).

³¹ See E-mail from Rose Oswald Poels, President and CEO, the Wisconsin Bankers Association, at 2, submitted as an attachment to the Petition of Reedsburg Utility Commission for Waiver, AU Docket No. 20-34 (filed Feb. 22, 2024), available at <https://www.fcc.gov/ecfs/document/102221094523933/5> (*Wisconsin Bankers Association Letter*).

higher.³² The Bureau explained that this waiver was warranted due to the continued difficulties that auction winners authorized to receive support have faced obtaining new LOCs from banks with the requisite Weiss bank safety rating, and the burden that effort places on carriers' ability to efficiently serve consumers and deploy networks in furtherance of the Commission's universal service goals.³³ The Bureau order noted that any change of the programs' rules would require Commission action.³⁴ We now seek comment on potential changes to those rules.³⁵

14. *Rural Digital Opportunity Fund LOCs.* RDOF support recipients are required to increase the value of their LOC on an annual basis.³⁶ The Commission adopted the LOC requirement to ensure that providers are able to repay any funds issued in the event of non-compliance with program rules or other issues. The LOCs increase in value as RDOF recipients receive more of their support over time, to ensure that those funds can be recouped in the event of default. RDOF support recipients may reduce the value of those LOCs to one year of support, however, if they meet optional and required deployment obligations, because the Commission found that RDOF support recipients that "demonstrated significant and verifiable steps toward meeting their deployment obligations[]" should have the opportunity to avoid some of the more significant credit requirements.³⁷ Accordingly, if a provider meets an optional 20% deployment milestone by the end of its second year of RDOF support, it may reduce its LOC's value to one year of its RDOF support.³⁸ Some participants, however, have sought relief from the rules requiring LOCs to increase in value on an annual basis, arguing that the increased funds required to maintain LOCs could be more efficiently used on broadband deployment.³⁹ In this NPRM, we seek comment on whether the optional deployment threshold should be lowered from 20% to 10%, and whether such a reduction would facilitate broadband deployment and program compliance while continuing to safeguard our Fund expenditures. We also seek comment on whether such a waiver should apply to RDOF recipients whose two-year optional deployment milestone has already passed.

15. *CAF II Letter of Credit Waiver Extension.* The Bureau's most recent waiver, which expires on December 31, 2024, allows CAF II support recipients that have met all of their deployment and reporting requirements to continue to follow the RDOF LOC rules.⁴⁰ In this NPRM, we seek comment on a long-term solution by changing the CAF II LOC rules to match the RDOF LOC rules for those CAF II support recipients that have met all of their deployment and reporting requirements.⁴¹

III. DISCUSSION

A. Weiss Bank Safety Ratings

16. In this NPRM, we seek targeted comment on whether and how we should change the sections of our letter of credit rules requiring a minimum safety rating for issuing financial institutions.

³² See *Weiss Waiver Order*.

³³ See *Weiss Waiver Order*.

³⁴ See *id.* at 3-4, para. 9.

³⁵ We note that this Notice only applies to United States banks that are required to maintain a Weiss bank safety rating of B- or higher. We do not propose any changes to our rules which allow CoBank, the National Rural Utilities Finance Corporation, or a non-United States bank to issue LOCs, subject to certain conditions which are not at issue here. 47 CFR §§ 54.315(c)(2)(ii)-(iv); 54.804(c)(2)(ii)-(iv); 54.1016(a)(2)(ii)-(iv); 54.1508(c)(2)-(4).

³⁶ See *supra* para. 3.

³⁷ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 731, para. 104.

³⁸ *Id.* at 730, para. 99.

³⁹ See, e.g. Coalition of RDOF Winners' Petition at 10.

⁴⁰ See *2023 LOC Waiver Extension*.

⁴¹ See Letter from Alan Buzacott, Executive Director, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed May 23, 2024) (*Verizon Ex Parte*).

Currently, Auction 903 and 904 support recipients are required to obtain a letter of credit from United States banks maintaining a Weiss bank safety rating of B- or better. In light of the developments in the banking industry described above, we seek comment on this requirement. We also seek comment on whether we should change our rule requiring United States banks to maintain a Weiss bank safety rating of B- or better for future recipients of support from the 5G Fund. If we decide to alter those rules, we seek comment on what requirements we should adopt for banks issuing letters of credit to support recipients, to further our dual goals of securing the financial commitments made through Auctions 903 and 904, and any auction of 5G Fund support, while maintaining a sufficiently expansive pool of issuing banks to enable broad participation in the programs by providers, and especially small providers. We seek comment on whether there are alternative, reliable ratings to use for assessing a bank's suitability for issuing an LOC to support recipients; or whether we should continue to utilize only Weiss ratings, but accept a lower grade for bank eligibility.⁴² In making any changes to the issuing bank eligibility rules, how can the Commission minimize any potential public interest harms and continue to responsibly steward the funds disbursed through CAF II Auction and RDOF programs as well as the 5G Fund? We anticipate that any changes to our bank eligibility rules could also apply to other FCC programs that currently have the same Weiss bank safety rating requirement.⁴³ We seek comment on this.

17. When the Commission adopted its requirement that banks maintain a Weiss bank safety rating of B- or better, it reasoned that Weiss offered “an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes.”⁴⁴ The Commission also determined that using the Weiss ratings would significantly increase the number of banks that could issue LOCs to support recipients, compared to a previous program that had more restrictive bank eligibility requirements, and that this change would encourage small entities to participate in Auction 903.⁴⁵ However, while approximately 3,600 banks were eligible to issue LOCs at the time of the Commission's previous order in 2016, that number has decreased by nearly half in the past two years.⁴⁶ We seek comment on any potential reasons for the significant number of decline in banks meeting this rating standard, and whether the conditions relating to that decline relate to the factors the Commission cared about when creating the initial LOC requirement. We also seek comment on whether these ratings changes have burdened entities, in particular small entities, that receive Auction 903 or 904 support. We seek specific examples demonstrating how the requirement burdens carriers and affects their ability to serve consumers. The record and the petitions certain carriers have filed seeking relief from the Weiss rating requirement indicate this is an issue worth exploring.⁴⁷ If the Commission ultimately concludes it is in the public interest to change the eligibility requirement for U.S. banks permitted to issue LOCs to support recipients, we seek comment on how we can best adopt changes that are still consistent with the Commission's rationale in adopting the original Weiss rating requirement.

18. First, we seek comment on any alternatives to using the Weiss bank safety rating. We note that our objective is to protect the Universal Service Fund and our expenditures, by ensuring that

⁴² The Wisconsin Bankers Association suggest that no bank safety rating is necessary. *Wisconsin Bankers Association Letter* at 2. (Stating that “WBA believes the FCC should remove the ‘safety rating’ requirement altogether”). However, we agree with the Commission's previous conclusion that eliminating a bank safety requirement and allowing any FDIC-insured bank to issue an LOC would then require the Commission “to conduct a comprehensive review of every bank to determine whether it has adequate safety and soundness,” and “the Commission lacks the expertise to conduct such a review and [such a review] would delay the authorization of winning bidders.” *CAF Phase II Auction Order*, 31 FCC Rcd at 5996, para. 132.

⁴³ See *supra* note 1 (listing the identical rule sections for Auction 903, Auction 904, the 5G Fund, and fixed support for Phase II of the Uniendo a Puerto Rico Fund and the Connect USVI Fund).

⁴⁴ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

⁴⁵ *Id.*

⁴⁶ *Weiss Waiver Order* at 3, para. 6.

⁴⁷ See *id.* at 2, para. 3 & n.7.

carriers have an LOC that can be relied upon, while simultaneously permitting carriers to choose from a reasonably wide range of banks that can issue LOCs for purposes of complying with our program rules. We seek comment on alternative approaches that would balance these objectives.

19. We seek specific comment on Bank of America's (BOA) proposed alternative method of determining a bank's eligibility.⁴⁸ BOA proposed that a U.S. bank could be eligible to issue LOCs to auction support recipients if the bank had either: (1) a Weiss bank safety rating of B- or better; or (2) a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's, which is the requirement for non-U.S. banks.⁴⁹ How would the Commission apply this proposed standard? Is the term "widely-recognized" credit rating agency a bright-line rule that Commission staff could easily apply?⁵⁰ What constitutes a widely-recognized agency? Would Commission staff or the Administrator be able to quickly and easily determine a bank's long-term unsecured credit rating? Are these ratings publicly available and free to access? If these ratings are not publicly available and free to access, how would Commission staff or the Administrator verify a bank's rating? As noted above, Commission staff or the Administrator should not be required to make any discretionary judgments about a bank's eligibility. Would this proposal provide additional alternatives to small businesses that have won support in Auction 903 or 904 or that may win support in a 5G Fund auction? We also seek comment more generally on alternative rating systems and alternative approaches to rating systems that could be used to evaluate the fitness of a U.S. bank, including any alternatives adopted by other agencies. What are the advantages or disadvantages of those rating systems and other approaches?

20. As another alternative, the Bank Policy Institute proposes that the "FCC reconsider its use of Weiss Ratings" and accept "letters of credit from any federally-supervised bank with an investment grade-rating for banks of \$100 billion or more in total assets or with a certificate that the bank is "well capitalized" for banks with assets below \$100 billion."⁵¹ We seek comment on this proposal. The Bank Policy Institute also argues that if the Commission wishes to use a credit-rating organization, it should use one of the ten nationally recognized credit rating statistical organizations which, unlike Weiss, are subject to SEC regulation.⁵² We also seek comment on the Bank Policy Institute's contention that using ratings from credit-rating organizations would be inconsistent with Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁵³

21. Second, we seek comment on whether continuing to use only the Weiss ratings, but instead allowing issuing banks to have a lower bank safety rating, would provide a solution. Weiss currently rates 4,526 banks, and 3,923 of them have a bank safety rating of C- or better.⁵⁴ According to Weiss, a C rating means "This is a cautionary or yellow flag. In the event of a recession or major financial crisis, we feel this company may encounter difficulties in maintaining its financial stability."⁵⁵

⁴⁸ Letter from James Carlisle, Senior Vice President, Federal Government Relations, Bank of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 8, 2023) (BOA *Ex Parte*).

⁴⁹ *Id.*

⁵⁰ We note that neither the Commission nor Commission staff has previously determined whether a credit rating agency was "widely recognized."

⁵¹ *BPI Letter* at 6.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ <https://weissratings.com/en/banking> (last visited June 4, 2024).

⁵⁵ Weiss Bank Ratings (last visited May 14, 2024), <https://weissratings.com/en/products/bank-ratings> (noting that a "minus sign" grade means the relevant bank is in the lower third of banks with that letter grade, i.e., a bank with a C-rating would be in the lower third of banks with a C rating. A bank with a "plus sign" grade means the bank is in the top third of banks with that letter grade.).

Would using that threshold address the issues that have been raised and still protect the Fund? We note that the LOC plays a vital role in ensuring our ability to recoup funds in the event that an auction support recipient fails to complete its deployment obligations,⁵⁶ and we need to be certain that the banks issuing the LOCs will be able to honor them. Weiss's ratings are publicly available and free to use, which allows for bright-line determinations about a bank's eligibility. Are there other advantages or disadvantages with using Weiss ratings but changing the requirement from B- or higher to C- or higher? Would changing the requirement from a minimum of a B- to C+ or C strike a better balance?⁵⁷ We note that an interested party has suggested that any Weiss-rated bank with "certain of the five Weiss indices" "at a certain level" should be eligible to issue LOCs to participants in the programs that award high-cost support through competitive bidding.⁵⁸ We seek comment on that proposal, and on how such a proposal could work. Are there any issues we should consider with regard to administering and implementing a change in our rules regarding bank eligibility? If so, we seek comment on those issues, along with any potential solutions.

B. RDOF Letter of Credit Reduction

22. We next seek comment on potential changes to our rules requiring an increase in the value of an LOC for RDOF support recipients. An RDOF recipient has raised the concern of "the economic pressures being brought to bear on current RDOF recipients in light of the astronomical increase in broadband deployment costs,"⁵⁹ and says those pressures can be addressed by relief from our rules regarding an LOC's value. This recipient pointed out that because "banks generally require these LOCs to be cash collateralized, RDOF recipients must tie up significant portions of their free cash to serve as collateral for the LOC, which, in turn, means that these funds cannot be used for build out of RDOF networks."⁶⁰ This recipient specifically asks that all RDOF support recipients be allowed to reduce their LOCs to one year of their total authorized support.⁶¹

23. We seek comment on the burdens of maintaining the LOC values currently required by our rules, and relief that we could provide related to the value of the LOC to address this concern. Have the rules requiring LOCs to increase in value on an annual basis impacted RDOF support recipients' ability to meet their deployment obligations? One specific option we seek comment on is allowing RDOF support recipients who have deployed service to at least 10%, rather than 20%, of their locations by the end of their second year of support to lower the value of their LOCs to one year of their total support upon verification by USAC.⁶² Does 10% "demonstrate concrete progress in building its network"

⁵⁶ *CAF Phase II Auction Order*, 31 FCC Rcd at 5992, para. 124.

⁵⁷ 2,580 banks have a rating of C+ or higher, while 3,101 banks have a rating of C or higher. Weiss Bank Ratings (last visited June 4, 2024), <https://weissratings.com/en/products/bank-ratings>.

⁵⁸ See Letter from F.X. Flinn, Chair, Governing Board, East Central Vermont Telecommunications District (dba ECFiber) to Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 10-90 (filed May 28, 2024) (ECFiber May 28 *Ex Parte*) (Suggesting that any Weiss-rated bank with "certain of the five Weiss indices" "at a certain level" should be eligible to issue LOCs to participants in the programs discussed herein).

⁵⁹ Letter from L. Elizabeth Bowles, President & CEO, Aristotle Unified Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed May 9, 2024) (Aristotle *Ex Parte*).

⁶⁰ *Id.* at 2.

⁶¹ *Id.* at 1 (making no reference as to whether or not the recipient would need to be in compliance with deployment obligation to benefit from this relief).

⁶² We decline to seek comment on applying any such change to the value of LOCs that are required of 5G Fund support recipients. See Letter from Amy E. Bender, Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 28, 2024) (CTIA *Ex Parte*). For RDOF support recipients, we are seeking comment on changing the letter of credit value requirements when certain milestones have been met due to concern over "economic pressures," which purportedly arose or significantly increased after the close of the auction. By contrast, the timing of the 5G Fund auction has not yet been set. It follows that bidders in that auction can factor in current economic conditions and any costs of complying with the 5G Fund's LOC rules.

(continued....)

as the Commission reasoned when it adopted a 20% optional milestone?⁶³ Generally, what are the public interest harms and public interest benefits of a 10% two-year optional milestone? How should we account for the fact that the two-year optional milestone has already passed for those RDOF carriers authorized in 2021? What, if any, form of additional LOC relief would be in the public interest for those carriers since they must meet the required 40% milestone by December 31, 2024?

24. We emphasize that any such change would be limited to the optional milestone and would not impact the requirement that all RDOF support recipients must deploy service to 40% of eligible locations by the end of their third year of support.⁶⁴ In the event that an RDOF support recipient then failed to timely meet its 40% deployment obligation, the value of its LOC would need to increase to reflect the amount required under the current rules.⁶⁵

C. CAF II Auction Letter of Credit Waiver

25. We separately seek comment on a proposal made in the record to amend the relevant CAF II Auction rules to mirror the RDOF LOC rules.⁶⁶ With a rule change, CAF II support recipients that have met all of their deployment and reporting obligations would be able to continue to follow the RDOF LOC rules through the end of CAF-II. The Bureau previously granted waivers allowing CAF II providers to follow the RDOF LOC rules because of the continued hardship posed by the COVID-19 pandemic.⁶⁷ Are those conditions that justified multiple waivers still present? If those conditions have improved, would the public interest otherwise be served by providing this relief permanently? We seek specific examples showing why such relief remains necessary. Alternatively, would it be in the public interest to extend the waiver another year rather than making permanent rule changes?

D. Digital Equity and Inclusion

26. Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁶⁸ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations⁶⁹ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals in this Notice may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

CTIA's ex parte does not otherwise provide a compelling reason to seek comment on reducing the required letter of credit values for the 5G fund.

⁶³ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 99.

⁶⁴ 47 CFR § 54.802(c)(1).

⁶⁵ 47 CFR § 54.804(c)(1)(iv).

⁶⁶ See *Verizon Ex Parte*.

⁶⁷ See, e.g., *2023 LOC Waiver Extension* at 1, 3, paras. 1, 8.

⁶⁸ Section 1 of the Communications Act of 1934, as amended, provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

⁶⁹ The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

IV. PROCEDURAL MATTERS

27. *Paperwork Reduction Act Analysis.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

28. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁷⁰ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁷¹ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this *Notice* on small entities. The IRFA is set forth in Appendix A. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

29. *Comments.* All comments to this Notice should be filed in WC Docket Nos. 10-90, Connect America Fund, 17-182, The Connect America Fund Phase II Auction, 18-143, The Uniendo a Puerto Rico Fund and the Connect USVI Fund, 19-126, The Rural Digital Opportunity Fund, and 20-34, the Rural Digital Opportunity Fund Auction, GN Docket No. 20-32 for the 5G Fund, and 24-144 for Letters of Credit for Recipients of High-Cost Competitive Bidding Support. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of a proceeding, the Commission’s rules require paper filers to submit two additional copies for each additional docket or rulemaking number.⁷²
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to

⁷⁰ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷¹ 5 U.S.C. § 605(b).

⁷² 47 CFR § 1.419(c).

help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁷³

30. *Ex Parte Presentations.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

31. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY)

32. *Providing Accountability Through Transparency Act:* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.421 of the Commission’s rules, 47 CFR §§ 1.1 and 1.421, that this Notice of Proposed Rulemaking IS ADOPTED.

34. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.421 of the Commission’s rules, 47 CFR §§ 1.1 and 1.421, NOTICE IS HEREBY GIVEN of the proposals described in this Notice of Proposed Rulemaking.

35. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission’s Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days from publication of this item in the Federal Register, and reply comments on or before 45 days from publication of this item in the Federal Register.

⁷³ *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice*, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁷⁴ 47 CFR § 1.1200 *et seq.*

36. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this 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 the Notice of Proposed Rulemaking (*Notice*). 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 provided on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, the Commission seeks comment regarding the rules determining a bank's eligibility to issue Letters of Credit (LOCs) for winners of Auction 903 and 904 support, along with winners of 5G Fund support and Phase II fixed support from the Puerto Rico/USVI Fund. The Commission's rules currently require recipients for support to maintain a letter of credit from a United States bank with a Weiss bank safety rating of B- or better. More than 1,600 U.S. banks that had previously been eligible to issue LOCs to support recipients have seen their Weiss bank safety ratings fall below a B- in the past two years and, correspondingly, lost their eligibility to supply support recipients with LOCs.⁴ We recognize that the current rules may burden those support recipients who wish to maintain their existing relationship with a bank that previously issued them an LOC. We seek comment on using a different Weiss letter grade as the threshold for bank eligibility. We alternatively seek comment on using a different rating system to evaluate a bank's health. We also seek comment on allowing Auction 904 support recipients who have deployed service to at least 10% of their required locations by the end of their second year of support to lower the value of their LOCs to one year of support. Finally, we seek comment on allowing Auction 903 support recipients that have met their deployment and reporting obligations to continue to maintain their LOCs under the Auction 904 rules.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1 and 1.412.

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

4. 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 proposed rules, if adopted.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 24-244, at 3, para. 6 (WCB Mar. 12, 2024) (*Weiss Waiver Order*).

⁵ 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ 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.⁸

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹¹

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹² The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹³ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁴

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹¹ *Id.*

¹² 5 U.S.C. § 601(4).

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2022 Census of Governments¹⁶ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number, there were 36,845 general purpose governments (county,¹⁸ municipal, and town or township¹⁹) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²⁰) with enrollment populations of less than 50,000.²¹ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²²

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as 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 communications networks.²³ 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.²⁴ By exception, establishments providing satellite television distribution services using facilities

¹⁵ 5 U.S.C. § 601(5).

¹⁶ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. *See also* Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁷ *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁸ *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁹ *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²⁰ *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²¹ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²³ U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁴ *Id.*

and infrastructure that they operate are included in this industry.²⁵ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁶

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁸ Of this number, 2,964 firms operated with fewer than 250 employees.²⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.³⁰ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³² is the closest industry with an SBA small business size standard.³³ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁶ Of this number, 2,964 firms operated with fewer than

²⁵ *Id.*

²⁶ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

²⁷ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

²⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³¹ *Id.*

³² U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³³ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁴ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁵ *Id.*

³⁶ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

250 employees.³⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.³⁸ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴⁰ is the closest industry with an SBA small business size standard.⁴¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴² U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴³ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁴⁵ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁶ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

12. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴⁷ Wired Telecommunications Carriers⁴⁸ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁹ *Id.*

⁴⁰ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴¹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴² *Id.*

⁴³ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁶ *Id.*

⁴⁷ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁴⁸ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

1,500 or fewer employees as small.⁴⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁵¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.⁵² Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁴ is the closest industry with a SBA small business size standard.⁵⁵ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁵⁹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

14. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁶⁰ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except

⁴⁹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁰ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵³ *Id.*

⁵⁴ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁵ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁶ *Id.*

⁵⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

⁵⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁰ U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

satellite) to businesses and households.⁶¹ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶² Mobile virtual network operators (MVNOs) are included in this industry.⁶³ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁴ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁵ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.⁶⁷ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁶⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁶⁹ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁷⁰ Mobile virtual network operators (MVNOs) are included in this industry.⁷¹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷² U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷³ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁵ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁶⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁸ *Id.*

⁶⁹ U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷³ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁷⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

they were engaged in the provision of toll services.⁷⁵ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁷⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁷ is the closest industry with a SBA small business size standard.⁷⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁸¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸² Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers⁸⁴ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁵ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁶ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁷ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale

⁷⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁶ *Id.*

⁷⁷ U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁸ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁹ *Id.*

⁸⁰ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁸¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸³ *Id.*

⁸⁴ U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

services for the entire year.⁸⁸ Of that number, 1,375 firms operated with fewer than 250 employees.⁸⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.⁹⁰ Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.⁹¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁹² private-operational fixed,⁹³ and broadcast auxiliary radio services.⁹⁴ They also include the Upper Microwave Flexible Use Service (UMFUS),⁹⁵ Millimeter Wave Service (70/80/90 GHz),⁹⁶ Local Multipoint Distribution Service (LMDS),⁹⁷ the Digital Electronic Message Service (DEMS),⁹⁸ 24 GHz Service,⁹⁹ Multiple Address Systems (MAS),¹⁰⁰ and Multichannel Video Distribution and Data Service (MVDDS),¹⁰¹ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁰² Wireless Telecommunications Carriers (except Satellite)¹⁰³ is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰⁵ Of this number,

⁸⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁸⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁹¹ *Id.*

⁹² 47 CFR Part 101, Subparts C and I.

⁹³ *Id.* Subparts C and H.

⁹⁴ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁹⁵ 47 CFR Part 30.

⁹⁶ 47 CFR Part 101, Subpart Q.

⁹⁷ *Id.* Subpart L.

⁹⁸ *Id.* Subpart G.

⁹⁹ *Id.*

¹⁰⁰ *Id.* Subpart O.

¹⁰¹ *Id.* Subpart P.

¹⁰² 47 CFR §§ 101.533, 101.1017.

¹⁰³ U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰⁴ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁵ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312,

(continued....)

2,837 firms employed fewer than 250 employees.¹⁰⁶ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

19. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹⁰⁷

20. In frequency bands where licenses were subject to auction, 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. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

21. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.¹⁰⁸ The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.¹⁰⁹ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹¹⁰ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.¹¹¹ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹¹² Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.¹¹³ Based on this data, the Commission estimates that a majority of firms in this industry are small.

<https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁰⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁷ 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹⁰⁸ U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹¹² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

¹¹³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that

(continued....)

22. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard 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.¹¹⁴ Based on industry data, there are about 420 cable companies in the U.S.¹¹⁵ Of these, only seven have more than 400,000 subscribers.¹¹⁶ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹⁷ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹¹⁸ Of these, about 639 have more than 15,000 subscribers.¹¹⁹ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

23. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one 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."¹²⁰ For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.¹²¹ Based on industry data, only six cable system operators have more than 498,000 subscribers.¹²² Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.¹²³ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and

operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹¹⁴ 47 CFR § 76.901(d).

¹¹⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹¹⁶ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

¹¹⁷ 47 CFR § 76.901(c).

¹¹⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹¹⁹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023).

¹²⁰ 47 U.S.C. § 543(m)(2).

¹²¹ *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 Subscriber Threshold PN). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice..See 47 CFR § 76.901(e)(1).

¹²² S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

¹²³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

television broadcast and wireless communications equipment.¹²⁴ Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹²⁵ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹²⁶ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹²⁷ Of this number, 624 firms had fewer than 250 employees.¹²⁸ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

25. *Satellite Telecommunications.* This industry comprises firms “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.”¹²⁹ Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small.¹³⁰ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹³¹ Of this number, 242 firms had revenue of less than \$25 million.¹³² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.¹³³ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹³⁴ Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

26. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide

¹²⁴ U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,”* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹²⁵ *Id.*

¹²⁶ 13 CFR § 121.201, NAICS Code 334220.

¹²⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²⁹ U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications,”* <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹³⁰ 13 CFR § 121.201, NAICS Code 517410.

¹³¹ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVfirm, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVfirm&hidePreview=false>.

¹³² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVfirm, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVfirm&hidePreview=false>.

¹³³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹³⁴ *Id.*

communications via the airwaves.¹³⁵ Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.¹³⁶ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹³⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹³⁸ Of that number, 2,837 firms employed fewer than 250 employees.¹³⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.¹⁴⁰ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.¹⁴¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

27. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁴² 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.¹⁴³ Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.¹⁴⁴ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁴⁵ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁴⁶ Of those firms, 1,039 had revenue of less than \$25 million.¹⁴⁷ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

¹³⁵ U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³⁶ *Id.*

¹³⁷ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁴⁰ Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2022)*, <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹⁴¹ *Id.*

¹⁴² See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFirm, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFirm&hidePreview=false>.

¹⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

28. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.¹⁴⁸ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁴⁹ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.¹⁵⁰ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.¹⁵¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹⁵² Of this number, 2,964 firms operated with fewer than 250 employees.¹⁵³

29. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.¹⁵⁴ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,¹⁵⁵ we believe that the majority of wireline Internet access service providers can be considered small entities.

30. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.¹⁵⁶ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"¹⁵⁷ Wireless service that terminates at an end user location or mobile device and enables the

¹⁴⁸ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

¹⁴⁹ 47 CFR § 1.7001(a)(1).

¹⁵⁰ U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁵¹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹⁵² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁵³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁵⁴ See Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹⁵⁵ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

¹⁵⁶ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

¹⁵⁷ Federal Communications Commission, *Internet Access Services: Status as of June 30, 2019* at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁵⁸ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹⁵⁹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁶⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁶¹ Of that number, 2,837 firms employed fewer than 250 employees.¹⁶²

31. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.¹⁶³ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹⁶⁴ as well as on terrestrial fixed wireless broadband providers in general,¹⁶⁵ we believe that the majority of wireless Internet access service providers can be considered small entities.

32. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹⁶⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁶⁷ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁶⁸ Of those firms, 1,039

¹⁵⁸ 47 CFR § 1.7001(a)(1).

¹⁵⁹ U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁶⁰ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶¹ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁶² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁶³ *IAS Status 2019*, Fig. 30.

¹⁶⁴ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

¹⁶⁵ *Id.* at 8, para. 22.

¹⁶⁶ U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁶⁷ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁶⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

had revenue of less than \$25 million.¹⁶⁹ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

33. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).¹⁷⁰ The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.¹⁷¹ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.¹⁷² Of those firms, 556 had revenue of less than \$25 million.¹⁷³ Consequently, we estimate that the majority of firms in this industry are small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

34. In the *Notice*, we seek comment on alternative methods of evaluating a bank's ability to provide a LOC to winners of Auction 903 and 904 support, along with winners of 5G Fund auctions. The *Notice* specifically seeks comment on modifying our rules to allow more banks to become or remain eligible to issue LOCs to Auctions 903 and 904 support recipients and to 5G Fund support recipients, which may alter reporting, recordkeeping, and compliance obligations for small entities that receive support. The *Notice* also seeks comment on allowing more Auction 904 support recipients to lower the value of their LOCs.

35. The potential changes in the *Notice* are intended to reduce the administrative burden on recipients of Auctions 903 and 904 support and 5G Fund support. The potential changes we seek comment on would allow support recipients, including small entities, to minimize their expenses by maintaining their existing LOC with the bank that issued it. As a result, if there is an economic impact on small entities as a result of these proposals, however, we expect the impact to be a positive one. Any potential changes we seek comment on would not add any additional compliance requirements for small entities, or additional costs for professional skills, because support recipients are already required to maintain a LOC under the current rules. The proposed changes would allow support recipients to maintain their existing LOCs instead of obtaining new ones. We also seek comment on allowing Auction 904 support recipients who have deployed service to at least 10% of their required locations by the end of their second year of support to lower the value of their LOCs. Finally, we seek comment on allowing Auction 903 support recipients that have met their deployment and reporting obligations to maintain LOCs in accordance with Auction 904's rules.

¹⁶⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁷⁰ U.S. Census Bureau, *2017 NAICS Definition*, "519190 All Other Information Services," <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

¹⁷¹ 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

¹⁷² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

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

36. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities 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 and reporting requirements under the rule for such 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 such small entities.”¹⁷⁴

37. In the *Notice*, the Commission takes steps to minimize the economic impact on small entities and considers significant alternatives by proposing and seeking input on alternative proposals designed to balance our goal of allowing providers to obtain an LOC from a number of different banks while also ensuring these banks are able to fulfill those LOCs in the event that the LOCs need to be drawn upon. With these goals in mind, in the *Notice*, we sought comment on whether a different standard for evaluating banks would allow providers to obtain LOCs from a wider range of banks while simultaneously protecting our investment and the Universal Service Fund.

38. We also considered alternatives to our existing rules, by seeking comment on alternative standards that could be used to evaluate the health and suitability of a bank. For example, Bank of America proposed an alternative method of determining a bank’s eligibility that includes the current Weiss rating of B- or better or a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor’s, which is the requirement for non-U.S. banks. In light of the economic burdens that auction support recipients could face by being required to obtain new LOCs from different banks, we sought comment on the most effective ways of allowing those support recipients to maintain their LOCs with the banks that originally issued them, as long as we are confident that the bank’s economic health is sufficient.

39. The matters discussed in the *Notice* are designed to ensure the Commission has a better understanding of both the benefits and the potential burdens associated with the different actions and methods before adopting its final rules. To assist in the Commission’s evaluation of the economic impact on small entities, as a result of actions we have proposed in the *Notice*, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the economic burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small businesses. Through comments received in response to the *Notice* and the IRFA, including costs and benefits information and any alternative proposals, the Commission expects to more fully consider ways to minimize the economic impact on small entities. The Commission’s evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities as a result of any final rules that are adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

40. None.

¹⁷⁴ 5 U.S.C. § 603(c)(1)–(4).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Letters of Credit for Recipients of High-Cost Competitive Bidding Support, et al.*, WC Docket Nos. 10-90, 18-143, 19-126, 24-144; AU Docket Nos. 17-182, 20-34; and GN Docket No. 20-32, Notice of Proposed Rulemaking (June 6, 2024)

We are on a mission to connect everyone, everywhere in this country to high-speed broadband. It's a lofty goal that requires attention to a whole lot of details. Today we address one of those details by taking a close look at the letter of credit requirement in our universal service support programs for broadband.

Historically, some of these programs have mandated that participating providers procure a letter of credit from a qualified financial institution. This protects public universal service funds in the event a provider receiving funds to expand broadband in rural areas defaults on its obligations. However, over time the number of banks meeting the rating standards in our different programs has decreased. This change in the marketplace has put a strain on providers because the cash reserves sufficient to secure a new letter or maintain a letter at the banks still in the business of providing them can sometimes slow deployment and operations.

That is why today we are taking a fresh look at our letter of credit requirements. Our goal is to make sure that we have right sized these letters and our rules for the current environment, so we can both protect our universal service programs and support broadband deployment for everyone, everywhere.

A special thank you to Commissioner Simington for identifying the need to address this issue. Thank you also to the staff responsible for this rulemaking, including Nathan Eagan, Jodie Griffin, Trent Harkrader, Jesse Jachman, and Heidi Lankau of the Wireline Competition Bureau; Malena Barzilai, Thomas Driscoll, Michael Janson, Richard Mallen and Wisam Naoum from the Office of General Counsel; Mary Lovejoy, Gary Michaels, Mark Montano, and Kelly Quinn from the Office of Economics and Analytics; Garnet Hanly from the Wireless Telecommunications Bureau; and Michael Gussow and Joycelyn James from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Letters of Credit for Recipients of High-Cost Competitive Bidding Support*, WC Docket No. 24-144, Notice of Proposed Rulemaking

When the Commission first launched the Rural Digital Opportunity Fund in 2020, we made a commitment to invest in rural communities and get them connected to broadband services. Keeping this promise demands that the Commission serve as a faithful steward of these funds, and ensure that each dollar goes toward the deployment of rural broadband infrastructure. Rural Americans have already waited far too long for these services, so they need us to get this right.

When we first laid out the RDOF program, I noted the importance of safeguarding this investment and stated that the letters of credit requirement would help “promote responsibility and protect the fund.” I believe this statement is no less true today and it applies to each of the broadband programs in this item. Requiring that support recipients obtain a letter of credit serves to demonstrate that the providers have the financial means to meet the broadband commitments they have made. When providers fail to meet their obligations and default on these commitments, of course, it is the rural communities that lack broadband services that are hurt.

As noted in this item, recent changes in the banking industry have significantly reduced the number of banks eligible to issue letters of credit. This has resulted in an influx of requests from support recipients for a waiver of these letter of credit rules as they have found that their bank no longer meets the requirements. I want to commend the Wireline Competition Bureau and its staff for diligently working through these requests and for issuing a temporary waiver earlier this year to ensure that Phase II of the Connected America Fund and the RDOF program can continue to run smoothly.

In light of these changes in the banking industry, today’s item re-evaluates the mechanism used to ensure the financial capabilities of broadband support recipients. Notably, we must do so without lessening the security and integrity of these programs. I believe this item does well to keep with the Commission’s goal of facilitating broad participation in these broadband programs while setting adequate safeguards for these public funds. This item has my support.

Thank you again to the Wireline Competition Bureau and staff for your good work on this item.