not such a legally-appointed guardian, submit an affidavit describing your relationship to the parent and the extent to which you are responsible for the care of the parent, or your position as an officer of the institution in which the parent is institutionalized.

For the Surviving Sibling by Blood

In addition to documents described in Part C items (1) through (8), above, each surviving sibling by blood should submit the following:

(17) An affidavit certifying that the deceased individual described in Part A, above, has no surviving spouse.

(a) In addition to the above affidavit, If the individual described in Part A, above, was divorced at the time of his death, a copy of the divorce decree from his spouse shall be submitted as additional proof that he has no surviving spouse.

(b) In addition to the above affidavit, If the individual described in Part A, above, had been married at some point prior to his death, and his spouse pre-deceased him, one of the following documents as evidence of the death of the spouse of the deceased individual described in Part A, above, shall be submitted as additional proof that he has no surviving spouse:

(i) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(ii) A certificate by the custodian of the public record of death;

(iii) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(iv) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(v) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(vi) If you cannot obtain any of the above evidence of death of the spouse of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(18) One of the following documents as evidence of the death of all of the children (if any), of the deceased individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of the children of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(19) One of the following documents as evidence of the death of the parents of the deceased in individual described in Part A, above:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of death of the parents of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

Each surviving sibling should submit the following:

(20) One document as evidence of your relationship to your sibling (the deceased individual described in Part A, above), as follows:

(a) Birth certificate showing that at least one of your deceased parents was also the natural parent of the deceased person described in Part A, above;

(b) If the birth certificate does not show the deceased individual described in Part A, above, as your sibling, a certified copy of:

(i) An acknowledgement in writing signed by the deceased person;

(ii) The public record of birth or a religious record showing that the deceased person was named as your sibling.

(iii) Affidavit of a person who knows that the deceased person was your sibling; or

(iv) Public records, such as records of school or welfare agencies, which show that the deceased individual was named as your sibling.

(v) If you cannot obtain any of the above evidence of your sibling relationship to the deceased individual described in Part A, above, you must submit any other evidence that would reasonably support a belief that a valid sibling relationship actually existed.

(21) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving sibling by blood of the deceased individual described in Part A, above, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the sibling and the extent to which you are responsible for the care of the sibling, or your position as an officer of the institution in which the sibling is institutionalized.

Dated: December 1, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–32755 Filed 12–9–98; 8:45 am]

BILLING CODE 5000–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 98–275]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses database issues, location portability, 500 and 900 number portability, and wireless issues, all of which were raised in petitions for reconsideration of the *First Report and Order* in this proceeding, and not addressed in the *First Order on Reconsideration*. We address these because their resolution will foster deployment of number portability and promote competition in the local telecommunications marketplace.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Askin, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580, or via the Internet at jaskin@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted October 15, 1998, and released October 20, 1998. The full text of this

Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW, Room 239, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98275.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis on Reconsideration which is set forth in the Order on Reconsideration. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) a succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

Synopsis of Second Memorandum Opinion and Order

I. Introduction

On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking*, 61 FR 38605, July 25, 1996 (*First Report and Order*) in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability. Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, ''to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Section 251(e)(2) provides that ''the costs of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' The Act defines ''number portability'' as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' In the *First Report and Order*, the Commission determined, among other things, that the Commission has authority under section 251 to promulgate rules regarding long-term and currently available number portability, as well as to establish cost recovery methods for each.

2. Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order*; 19 parties filed oppositions or comments on the petitions; and 16 parties filed reply comments. On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration*, 62 FR 18280, April 15, 1997 *(First Order on Reconsideration)* in this proceeding, addressing a number of issues. In this *Second Memorandum Opinion and Order on Reconsideration*, we address all remaining issues raised by the petitioners, except issues relating to cost recovery for currently available number portability, which will be addressed in a future order. We also address American Mobile Telecommunications' (AMTA) petition for reconsideration of the *First Order on Reconsideration*, which raises similar issues to those raised by AMTA in its petition for reconsideration of the *First Report and Order*.

II. Background

3. In the *First Report and Order*, the Commission required all LECs to begin implementing a long-term service provider portability solution that meets the Commission's performance criteria in the 100 largest Metropolitan Statistical Areas (MSAs) no later than October 1, 1997, and to complete deployment in those MSAs by December 31, 1998, in accordance with a phased implementation schedule. In the *First Order on Reconsideration*, the Commission modified this schedule, extending the completion dates for the first two phases of the implementation schedule and clarifying that, within the 100 largest MSAs, LECs need only provide number portability in switches for which another carrier has made a specific request for the provision of portability.

4. In the *First Report and Order*, the Commission also required all cellular, broadband personal communications services (PCS) and covered specialized mobile radio (SMR) providers to have the capability of delivering calls from their networks to ported numbers anywhere in the country by December 31, 1998, and to offer service provider portability, including the ability to support roaming, throughout their networks by June 30, 1999. In the *First Order on Reconsideration*, the Commission concluded that these commercial mobile radio service (CMRS) providers need only deploy local number portability by the June 30, 1999, deadline in switches in the 100 largest MSAs for which they receive a request at least nine months prior to the deadline. On September 1, 1998, the Wireless Telecommunications Bureau extended the deadline for implementation of number portability by CMRS providers to March 31, 2000.

5. In the *First Report and Order*, the Commission concluded, *inter alia*, that a system of regional number portability databases, managed by independent local number portability administrator(s) (LNPA(s)) would serve the public interest. The Commission directed the North American Numbering Council (NANC), an advisory committee established pursuant to the Federal Advisory Committee Act, to recommend as local number portability administrators one or more independent, non-governmental entities that are not aligned with any particular telecommunications industry segment within seven months of the initial meeting of the NANC. The Commission also directed the NANC to make recommendations regarding, *inter alia*, the duties of local number portability administrator(s), the location of regional databases, and technical specifications for the regional databases. In the *Second Report and Order*, 62 FR 48774, September 17, 1997, the Commission adopted, with minor modifications, the *NANC LNPA Working Group Report*, containing the recommendations of the NANC regarding the selection of LNPAs, the duties of LNPAs, the locations of regional databases, and technical specifications for the regional databases.

III. Reconsideration Issues

A. Database Issues

1. Treatment of Industry Efforts to Implement Regional Databases Prior to Issuance of NANC's Recommendations

a. Discussion

6. The Commission has adopted the *NANC LNPA Working Group Report*, which contains NANC's recommendations with respect to regional database implementation, in a separate order. In particular, in that order, the Commission adopted the NANC's recommendation that Lockheed Martin serve as local number portability database administrator for the Northeast, Mid-Atlantic, Midwest and Southwest regions, and that Perot Systems serve as the local number portability database administrator for the Southeast, Western and West Coast regions.

7. On February 20, 1998, the Chief of the Common Carrier Bureau received a letter from the Chairman of the NANC informing him that the Limited Liability Corporations (LLCs) for the Southeast, Western, and West Coast regions reported to the NANC on local number portability implementation. The LLCs for the Southeast, Western, and West Coast regions reported that it was necessary to terminate their contracts with Perot Systems, with whom they had experienced repeated performance problems, and to enter into contracts with Lockheed Martin to serve as the LNPA to expedite implementation of local number portability. The NANC members supported unanimously the decision to change vendors as ''essential in successfully implementing [number portability] in these regions.''

8. We adopt the *NANC Perot Recommendation* to replace Perot Systems with Lockheed Martin as the LNPA in the Southeast, Western and West Coast regions. The record indicates that the NPAC database and associated facilities needed for long-term number portability in the regions where Perot Systems was the database administrator were not ready for intercompany testing as late as January 23, 1998, putting in jeopardy the dates for which number portability was required to be made commercially available in these regions. The record indicates that this delay was specifically due to the failure of the designated LNPA, Perot Systems, to provide a stable software and hardware platform. We find that *NANC Perot Recommendation* supports timely implementation of local number portability.

9. We find it unnecessary to authorize expressly or approve automatically carriers' actions implementing regional database solutions that were taken prior to the issuance of the *NANC LNPA Working Group Report* or the Commission's order acting on the *NANC LNPA Working Group Report*. We conclude that the concerns raised by BellSouth and U S WEST in this area have become moot in light of subsequent industry actions to implement local number portability. Carriers, both on their own and through the regionally-based LLCs, have successfully worked with the NANC to implement regional SMS database solutions.

2. Scope of the NANC's Responsibilities

a. Discussion

10. We find moot BellSouth's request that the NANC should address only SMS database administration. The recommendations contained in the *NANC LNPA Working Group Report*, adopted by the Commission in the *Second Report and Order*, address technical specifications related to SMS database administration only and do not address SMS/SCP pairs.

11. In addition, we find moot BellSouth's request that carriers, and not the NANC, propose standards for interfaces between regional SMS and downstream SCP databases. In the *Second Report and Order*, the Commission adopted the NANC's recommended standards for interfaces between regional SMS and downstream SCP databases. The carriers sharing in the costs of developing, establishing and maintaining the regional databases had ample opportunity, through the NANC, to participate in the development of interface recommendations.

12. Finally, we find moot Pacific's request that we direct an industry group other than the NANC to address operational and technical issues that will arise as number portability is implemented. In the *Second Report and Order*, the Commission found that the NANC represents a broad cross-section of the industry, has developed substantial expertise in number portability issues, and provides a valuable forum in which carriers are able to consider, at the national level, possible ways to resolve the issues that arise as number portability is deployed within each number portability region. As a result, the Commission charged the NANC with the task of addressing technical and operational issues related to local number portability that may arise in the future.

3. Effect of Implementation of Long-Term Number Portability on Interim Number Portability Methods

a. Discussion

13. We clarify that all LECs must discontinue using transitional number portability methods in areas where a long-term number portability method has been implemented. In the *First Report and Order*, the Commission concluded that the Act ''contemplates a dynamic, not static, definition of technically feasible number portability methods.'' Based on this finding, the Commission required LECs to offer number portability, as soon as reasonably possible upon receipt of a specific request, through remote call forwarding (RCF), direct inward dialing (DID) and other comparable methods, because these are the only methods that currently are technically feasible. Because transitional number portability methods do not meet the performance criteria established for long-term number portability, LECs may not continue to utilize such measures once long-term solutions have been implemented. This conclusion is consistent with the Commission's finding in the *First Report and Order* that the Act ''clearly contemplates that [currently available] methods should serve as only temporary measures until long-term portability is implemented.''

14. We also wish to clarify that, under the rules adopted in the *First Report and Order*, RCF and DID are not the *exclusive* methods of providing number portability that LECs are obligated to provide today. As the Commission stated in the *First Report and Order*, ''LECs are required to offer number portability through RCF, DID, and other *comparable* methods because they are the only methods that currently are technically feasible.'' In specifically identifying RCF and DID as technically feasible number portability methods, the Commission did not imply that RCF and DID are the *only* methods through which LECs must port numbers until a permanent number portability solution is implemented. Clearly, the references to RCF and DID were illustrative of the types of measures that LECs must provide on a transitional basis. The Commission's rules require that LECs must provide, on a transitional basis, any technically feasible method of number portability comparable to RCF and DID.

15. In the two years since adoption of the *First Report and Order*, a number of state commissions have ordered carriers to provide Route Indexing—Portability Hub (RI–PH) and Directory Number Route Indexing (DNRI), based on

findings of technical feasibility. To date, LECs in more than half the states have either agreed or been ordered to provide RI–PH and DNRI as technically feasible methods of providing number portability prior to deployment of a database method. We therefore conclude, consistent with the Commission's prior findings in this docket and with the rules and policies established in the Commission's *Local Competition Order*, 61 FR 45476, August 29, 1996, that RCF, DID, DNRI and RI–PH are comparable and technically feasible transitional methods of providing number portability. We conclude that state commissions may determine that additional methods are comparable and technically feasible, as well.

16. In adopting the requirements for transitional number portability in the *First Report and Order*, the Commission relied on the fact that no network modifications would be necessary in order to provide number portability on a transitional basis, prior to implementation of a long-term database solution. In particular, in adopting section 52.27, the Commission concluded that it is not unduly burdensome for LECs to provide number portability through RCF and DID because these methods are offered as retail services in a number of states today.

17. Since adoption of the *First Report and Order*, certain new entrants have sought other transitional methods of number portability that are better suited, in their view, to their particular business needs. A number of carriers make available other transitional methods of number portability, such as RI–PH and DNRI, only if requested by a competing carrier. We conclude that it is not *per se* unreasonable for a LEC to make available transitional number portability methods only upon request, provided that the LEC does not deliberately use the request process to delay competitive entry. We would expect a LEC to respond expeditiously to a request for a particular method of transitional number portability.

18. The *First Report and Order* did not address the issue of which carrier has the right to select the particular transitional method of number portability to be provided when there is more than one technically feasible method. We amend the Commission's rules, on our own motion, to clarify that a LEC is required to furnish the specific method of currently available number portability that a competing carrier requests, provided that provision of the requested method is not unduly burdensome. We believe that the burden of fulfilling a competing carrier's request for a specific method of providing number portability will be minimal if the functionality described by a requested currently available method already exists in the network. As the Commission noted in the *First Report and Order*, the capability to provide number portability through currently available methods, such as RCF and DID, already exists in most networks, and no additional network upgrades should be necessary in order to provide number portability in this manner. We clarify this finding by adding that, to the extent no network upgrades are necessary in order to provide number portability through methods other than RCF or DID, a LEC must make such methods available upon request as well.

19. Given that a number of states have ordered LECs to provide RI–PH and DNRI, we presume that RI–PH and DNRI are not unduly burdensome to provide. We conclude that the burden should be on the LEC providing number portability to overcome this presumption. In particular, consistent with the pro-competitive goals of the Act, we conclude that the LEC shall bear the burden of demonstrating that a particular requested transitional number portability method is unduly burdensome, and therefore should not be provided to a requesting carrier. In determining whether a specific method is unduly burdensome, relevant factors are the extent of network upgrades needed to provide the requested method, the cost of such upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method in that particular geographic location.

4. Issues Related to Performance Criteria

a. Discussion

20. We reject Nextel's request that the Commission establish an industry committee to develop a single, nationwide number portability methodology. As a threshold matter, we disagree with Nextel's underlying premise that number portability methodology decisions will be made on a state-by-state basis. In the *First Report and Order*, the Commission specifically concluded that regionally deployed databases best serve the public interest. Because the harm that Nextel raised in its petition (*i.e.*, the deployment of a different number portability plan in each state resulting in dramatically increased costs for multi-state providers) has not occurred and is not likely to occur, we conclude that it is unnecessary to grant Nextel's request.

21. In addition, we note that, to a great extent, the NANC already has served the function that Nextel asserts is necessary. The NANC was charged with developing recommendations regarding the implementation of number portability, in large part, ''to ensure consistency and to provide a national perspective on number portability issues, as well as to reduce the costs of implementing a national number portability plan.'' Further, the NANC includes representatives from each of the constituencies that Nextel identifies: state and federal officials, service providers, and equipment manufacturers. Moreover, we point out that, to date, the industry and state/regional workshops have chosen the Location Routing Number (LRN) methodology as the preferred method of number portability, and carriers have proceeded to implement LRN. As such, it would appear that states have chosen the same number portability method, rather than several incompatible methods, as Nextel feared.

22. We grant AirTouch's request for clarification that carriers may arrange with other carriers to perform database dips and other routing functions. Contrary to AirTouch's claims, we have not assumed, nor do we require, that all carriers must satisfy their number portability obligations by upgrading their networks to perform database dips. In the *Second Report and Order*, the Commission concluded that, although the carrier in the call routing process immediately preceding the terminating carrier shall be responsible for ensuring that number portability database dips are performed, that carrier can meet this obligation by either querying the number portability database itself or by arranging with another entity to perform database dips on its behalf.

B. Location Portability

1. Discussion

23. We decline to adopt SBC's proposal that the Commission decide now that we will not consider location portability until service provider number portability is successfully deployed in the 100 largest MSAs. The Commission concluded in the *First Report and Order* that the requirement that all LECs provide local number portability (*i.e.*, service provider portability) pursuant to section 251(b)(2) does not include location portability because the Act's number portability mandate is limited to situations when users remain ''at the same location'' when switching from one telecommunications carrier to another. Although we did not require LECs to

provide location portability when the *First Report and Order* was issued, we nevertheless concluded that nothing in the Act would preclude us from mandating location portability if, in the future, we determine that location portability is in the public interest.

24. The Commission has no current plans to address location portability at this time. We need not and do not address the issue of whether it may be in the public interest to require the implementation of location portability at some point in the future.

C. 500 and 900 Number Portability

25. In the *First Report and Order*, the Commission concluded there was insufficient evidence in the record to determine whether it is technically feasible for LECs to make their assigned 500 and 900 numbers portable. The Commission directed the Industry Numbering Committee (INC) to examine this issue and to file a report of its findings with the Commission within twelve months of the effective date of the *First Report and Order*. The Commission stated that ''[u]pon receipt of this report, we will take appropriate action under the * * * Act.'' The INC released its report on July 2, 1997.

1. Provision of 500 and 900 Number Portability By Carriers Other Than LECs

a. Discussion

26. The number portability requirements of section 251(b)(2) apply only to LECs. Specifically, section 251(b)(2) imposes a duty on ''each local exchange carrier * * * to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Thus, we cannot rely on section 251 for authority to require IXCs or other non-LECs to provide number portability for 500 and/or 900 number service. We therefore affirm the Commission's conclusion in the *First Report and Order* that IXCs are not required under section 251(b)(2) to make their assigned 500 and 900 numbers portable to any other carrier offering 500 and 900 number service.

27. We, however, may possess independent authority under sections 1, 2 and 4(i) of the Act to require other carriers to provide number portability for 500 and/or 900 number service to the extent that such portability is in the public interest. Section 1 requires the Commission to make available to all people of the United States ''a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.'' Section 1 of the Act thus gives the Commission jurisdiction to ensure that the portability of *all* telephone numbers within the United States, including 500 and 900 numbers, is handled efficiently and fairly. 500 and 900 number portability would promote this mandate. 500 and 900 number portability also would promote the efficient and uniform treatment of numbering that is essential to the efficient delivery of interstate and international telecommunications. Section 2 gives the Commission authority to regulate interstate common carriers, including those that provide 500 and 900 number services. Section 4(i) grants the Commission authority to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions.'' The conclusion that we may possess independent authority to require all carriers to provide number portability for their assigned 500 and 900 numbers would be similar to the Commission's decision in the *First Report and Order* to rely on its general rulemaking authority to order number portability for CMRS providers, and to reserve the Commission's authority to require service and location portability, even though the Commission concluded that these types of number portability are not specifically required by section 251(b)(2). This result would also be consistent with our exercise of authority under sections 1, 2 and 4(i) to require the Bell Operating Companies and GTE to provide number portability for 800 numbers even prior to enactment of the 1996 Act.

28. As the Commission noted in the *First Report and Order*, most users of 500 and 900 number services today have obtained their numbers from IXCs. Thus, ''as a practical matter, portability for the vast majority of 500 and 900 numbers can occur only if the IXC releases to the new carrier management of the 500 or 900 number that is to be ported.'' If only LECs were required to make their 500 and 900 numbers portable, the vast majority of 500 and 900 numbers would not be portable, and competing 500 and 900 service providers would face a significant impediment in persuading customers to switch carriers. Imposing portability obligations on all 500 and 900 service providers would make it possible for all customers of 500 and 900 services to switch providers without changing their numbers. This, in turn, would promote competition in the 500 and 900 services markets.

29. We decline to rule at this time, however, on our authority to require all carriers to offer 500 and 900 number portability. We will first determine whether 500 and/or 900 number portability by all carriers is technically feasible. In the event that it is determined that 500 and 900 number portability by all carriers is technically feasible, we will address our authority to impose the same number portability requirements on all carriers that provide 500 and 900 services.

2. Implementation of 500 and 900 Number Portability

a. Discussion

We decline to determine at this time whether we have independent rulemaking authority to require number portability for 500 and 900 numbers assigned to all carriers, if that would serve the public interest. In its report, the INC expressly limited its analysis to the technical feasibility of porting numbers assigned to LECs between LECs; it did not address the technical feasibility of LEC-to-non-LEC, non-LEC-to-LEC, or non-LEC-to-non-LEC portability for 500 or 900 numbers. In order to evaluate whether the public interest would be served by mandating 500 and 900 number portability for all carriers, we must first determine whether number portability for the entire 500 and 900 number resource is technically feasible. We therefore conclude that we should expand the scope of the inquiry that the Commission previously delegated to the INC. We direct the NANC, which may refer the issues to the INC, to examine the following questions:

1. Is it technically feasible for all 500 number service providers to implement 500 number portability using existing network and administrative database capabilities?

2. If the answer to Question #1 is ''No,'' is technology available to develop the appropriate network and administrative database capabilities to deploy 500 number portability in the future?

3. If the answer to Question #2 is ''Yes,'' how long would it take to develop and deploy the necessary network infrastructure for 500 number portability, upon receipt of a regulatory directive?

4. Is it technically feasible for all 900 number service providers to implement 900 number portability using existing network and administrative database capabilities?

5. If the answer to Question #4 is ''No,'' is technology available to develop the appropriate network and administrative database capabilities to deploy 900 number portability in the future?

6. If the answer to Question #5 is ''Yes,'' how long would it take to

develop and deploy the necessary network infrastructure for 900 number portability, upon receipt of a regulatory directive?

31. The NANC is directed to file a report addressing the questions referred to it in this *Second Memorandum Opinion and Order on Reconsideration* within twelve months of the effective date of this order. Upon receipt of the NANC's report, we will take appropriate action.

32. We decline to rule at this time on SBC's request that we consider economic feasibility, as well as technical feasibility, in evaluating the provision of 500 and 900 number portability. As a practical matter, we believe that it is premature to determine what factors may be appropriate to consider with respect to the possible implementation of portability for such numbers, if we ultimately conclude we have jurisdiction to order portability of those numbers for all carriers.

D. Wireless Issues

33. In the *First Report and Order,* the Commission concluded that number portability must be provided by cellular, broadband PCS, and covered SMR providers.

34. With respect to wireless carriers, the Commission concluded that number portability will facilitate the entry of new service providers, such as broadband PCS and covered SMR, into CMRS markets currently dominated by cellular providers, and competition from these new entrants will provide incentives for incumbent cellular providers to lower prices and increase service choice and quality. The Commission also noted that number portability will promote competition between CMRS and wireline service providers as CMRS providers offer comparable local exchange and fixed commercial radio services. The Commission determined that it would not adopt a number portability schedule for other categories of CMRS providers (including SMR operators that do not fit the definition of ''covered SMR'') because these other providers offer services that ''currently will have little competitive impact on competition between providers of wireless telephony service or between wireless and wireline carriers.''

1. Definition of ''Covered SMR''

b. Discussion

35. The term ''covered SMR'' was intended to include SMR licensees that offer services that compete, or potentially compete, with services offered by cellular and broadband PCS licensees. The Commission concluded that because cellular, broadband PCS, and certain SMR providers will compete directly with one another, and potentially will compete in the future with wireline carriers, number portability was sufficiently important to the development of competition that it should be required for these carriers. Within the SMR service, however, it was clear that some providers would be offering mass market, two-way, real-time, interconnected voice services that compete with the offerings of traditional cellular and broadband PCS providers, and others would not. The definition of covered SMR is intended to distinguish between these two groups of SMR providers.

36. We agree with the petitioners that the existing definition of ''covered SMR'' imperfectly accomplishes its intended purpose.

37. We note also that it may be infeasible, from a technical standpoint, to require SMR providers whose systems lack an in-network switching capability to provide number portability.

38. For the foregoing reasons, we adopt, with some modification, the definition suggested by the petitioners:

''Covered CMRS systems offer real-time, two-way switched voice service that are interconnected with the public switched network, and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.''

With this change, number portability must be provided by ''covered CMRS'' providers, which may hold licenses in cellular, PCS, SMR or any other services.

39. We also clarify, in response to Nextel's petition, that the definition of covered CMRS should be applied on a system-by-system basis. That is, an entity may hold more than one CMRS license, but the entity is required to provide number portability only with respect to licenses that satisfy the definition of covered CMRS.

40. In addition, we reject AMTA's proposal that the covered SMR definition apply only to systems serving 20,000 or more subscribers nationwide. The approach we adopt above is a functional one, which is based on whether the provider offers a certain type of service. We find that determining whether an SMR system is required to provide number portability based on how many subscribers it serves would be arbitrary, and could discourage SMR providers from expanding their systems.

41. Further, we dismiss SBT's petition for reconsideration as untimely. Public notice in this case was given on July 26, 1996, the date on which the *First Report and Order* was published in the **Federal Register**. Therefore, petitions to reconsider that decision were due on or before August 26, 1996. Because the time period for filing petitions for reconsideration is prescribed by statute, the Commission may not, except in extraordinary cases, waive or extend the filing period. SBT has not demonstrated that its late-filed petition fits into this narrow exception; indeed, SBT has not even moved for leave to file its petition. As such, we dismiss SBT's petition.

42. Finally, we dismiss AMTA's petition for reconsideration of the *First Order on Reconsideration* as moot. By amending, in this Order, the Commission's rules to ensure that only those CMRS carriers that compete in the market for two-way, interconnected, real-time voice services are subject to the Commission's number portability requirements, we grant the relief that AMTA requests. Moreover, because we have clarified that CMRS licensees providing primarily dispatch service with a non-cellular type of system are exempt from the Commission's number portability requirements, there is no need to extend the implementation period for such licensees.

2. Geographic Scope of Number Portability for Wireless Carriers

a. Discussion

43. Requiring service provider portability in a wireless environment, without imposing any geographic boundaries, could theoretically result in *de facto* nationwide location portability, which the Commission explicitly declined to adopt in the First *Report and Order.* Conversely, limiting number portability in a wireless environment to those carriers already serving the NPA of the ported wireless number may thwart the pro-competitive goals of the Act. A single geographic area may now have multiple NPAs due to area code overlays. Typically, wireless carriers provide their customers with the choice of NPAs when they have more than one switch in the geographic market, but some new entrants may only have one or two switches with all numbers coming out of the same NPA. Limiting number portability in a wireless environment to those carriers already serving the NPA of the ported wireless number may discourage customers from switching wireless carriers if they cannot port their number to a different NPA even though the number continues to be used in the same geographic

market. As noted, wireless carriers are not obligated to port numbers until March 31, 2000. Furthermore, the NANC is currently examining the myriad of complex issues surrounding wireless number portability. Consequently, we defer a decision on this matter pending further analysis by the NANC. We encourage AirTouch to participate in the NANC's standards development process to ensure consideration of AirTouch's concerns.

3. Preemption of State Number Portability Requirements for CMRS Providers

a. Discussion

44. We reject the request for preemption of state number portability requirements for CMRS carriers. While, under certain circumstances, the Commission has authority to preempt state law, the record is devoid of any evidence that such action is warranted at this time. Pursuant to the Supremacy Clause of the U.S. Constitution, Congress has the power to preempt state laws or regulations.

45. The petitioners have failed to identify any specific state number portability requirements that apply to CMRS carriers that conflict with federal number portability mandates or objectives. Nor is there a basis in the current record for concluding that it will be impossible for carriers to comply with federal and state CMRS number portability requirements. Thus, we decline to consider the preemption of state number portability requirements for CMRS carriers based on the record before us.

46. In addition, despite the conclusory assertions of the petitioners to the contrary, the record does not indicate that there are, or will be, state number portability requirements applicable to CMRS carriers that will conflict with the requirements of any other state, such that CMRS carriers will be required to accommodate multiple portability architectures and/or service requirements. Indeed, the framework for implementing number portability is designed, in part, to minimize such burdens. For example, in the *First Report and Order*, the Commission directed one entity—the NANC—to develop recommendations for technical and operational standards with respect to regional number portability databases. Accordingly, we expect there will be a high degree of national uniformity in this regard. Moreover, as discussed above, the industry and state/regional workshops chose a single method as the preferred method for number portability. In short, it is unlikely that CMRS systems that span state lines will be required to accommodate multiple portability architectures that differ significantly from one another.

IV. Ordering Clauses

47. *It is ordered that*, pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251 and 332, and 47 CFR 52 is amended.

48. *It is further ordered* that the Petitions for Reconsideration and/or Clarification are granted to the extent indicated herein and otherwise are denied.

49. *It is further ordered* that the policies, rules, and requirements set forth herein are adopted, effective 30 days after publication of a summary of this *Second Reconsideration Order* in the **Federal Register**.

50. *It is further ordered* that the Petition for Reconsideration of Small Business in Telecommunications is hereby dismissed.

51. *It is further ordered* that the Petition for Reconsideration filed by the Ameritech Mobile Telecommunications Association, Inc. on May 15, 1997, is dismissed as moot.

52. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Second Memorandum Opinion and Order on Reconsideration, including the Second Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

Part 52 of Title 47 of the Code of Federal Regulations (CFR) is amended as follows:

PART 52—NUMBERING

1.The authority citation for Part 52 continues to read as follows:

Authority: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. Section 52.21 is amended by revising paragraphs (c) and (q) to read as follows:

§ 52.21 Definitions.

* * * * *

(c) The term *covered CMRS* means broadband PCS, cellular, and 800/900 MHz SMR licensees that hold geographic area licenses or are incumbent SMR wide area licensees, and offer real-time, two-way switched voice service, are interconnected with the public switched network, and utilize an in-network switching facility that enables such CMRS systems to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

* * * * *

(q) The term *transitional number portability measure* means a method that allows one local exchange carrier to transfer telephone numbers from its network to the network of another telecommunications carrier, but does not comply with the performance criteria set forth in 52.3(a). Transitional number portability measures are technically feasible methods of providing number portability including Remote Call Forwarding (RCF), Direct Inward Dialing (DID), Route Indexing—Portability Hub (RI–PH), Directory Number Route Indexing (DNRI) and other comparable methods.

3. Section 52.27 is revised to read as follows:

§ 52.27 Deployment of transitional measures for number portability.

(a) All LECs shall provide transitional number portability measures, as defined in section 52.21(q) of this chapter, 47 CFR 52.21(q), as soon as reasonably possible upon receipt of a specific request from another telecommunications carrier, until such time as the LEC implements a long-term database method for number portability in that area.

(b) A LEC must provide the particular transitional number portability measure requested by a telecommunications carrier, except as set forth in paragraph (c) of this section.

(c) A LEC that does not provide a requested transitional number portability measure must demonstrate that provision of the requested transitional number portability measure either is not technically feasible or if technically feasible, is unduly burdensome.

(1) Previous successful provision of a particular transitional number portability measure by any LEC constitutes substantial evidence that the particular method is technically feasible.

(2) In determining whether provision of a transitional number portability measure is unduly burdensome, relevant factors to consider are the extent of network upgrades needed to provide that particular method, the cost of such upgrades, the business needs of the requesting carrier, and the timetable for deployment of a long-term number portability method in that particular geographic location.

(d) LECs must discontinue using transitional number portability measures in areas where a long-term number portability method has been implemented.

4. Section 52.31 is amended by revising paragraphs (a), (b), and (e) as follows:

§ 52.31 Deployment of long-term database methods for number portability by CMRS providers.

(a) By March 31, 2000, all covered CMRS providers must provide a long-term database method for number portability, including the ability to support roaming, in compliance with the performance criteria set forth in section 52.23(a) of this chapter, 47 CFR 52.23. A licensee may have more than one CMRS system, but only the systems that satisfy the definition of covered CMRS are required to provide number portability.

(b) By December 31, 1998, all covered CMRS providers must have the capability to obtain routing information, either by querying the appropriate database themselves or by making arrangements with other carriers that are capable of performing database queries, so that they can deliver calls from their networks to any party that has retained its number after switching from one telecommunications carrier to another.

* * * * *

(e) The Chief, Wireless Telecommunications Bureau, may establish reporting requirements in order to monitor the progress of covered CMRS providers implementing number portability, and may direct such carriers to take any actions necessary to ensure compliance with this deployment schedule.

Second Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in this docket (*NPRM*). The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The comments received on the IRFA were discussed in the *First Report and Order's* Final Regulatory Flexibility Analysis (FRFA-First Report and Order), which was incorporated as Appendix C to the *First Report and Order* in this docket. The FRFA-First Report and Order conforms to the RFA. On reconsideration of the *First Report and Order*, parties commented on the FRFA-First Report and Order. The comments received on the FRFA-First Report and Order were discussed in the Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) incorporated into the *First Order on Reconsideration* in this docket. The Supplemental FRFA conforms to the RFA. This Second Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) is incorporated as an appendix to the *Second Order on Reconsideration* in this docket. This Second Supplemental FRFA also conforms to the RFA.

A. Need for and Objectives of Second Order on Reconsideration

2. The need for and objectives of the requirements adopted in this *Second Order on Reconsideration* are the same as those discussed in the Final Regulatory Flexibility Analysis in the *First Report and Order*. The Commission, in compliance with sections 251(b)(2) and 251(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), adopts requirements and procedures intended to ensure the prompt implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. These requirements are necessary to implement the provision in the Act requiring local exchange carriers (LECs) to offer number portability, if technically feasible. In implementing the statute, the Commission has the responsibility to adopt requirements that will implement most quickly and effectively the national telecommunications policy embodied in the Act and to promote the pro-competitive, deregulatory markets envisioned by Congress. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace.

B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA, FRFA-First Report and Order, and Supplemental FRFA

3. The comments received on the IRFA were discussed in the FRFA-First Report and Order incorporated into the *First Report and Order*. The comments received on the FRFA-First Report and Order were discussed in the Supplemental FRFA incorporated into the *First Order on Reconsideration*. No additional comments were sought or received for purposes of this Second Supplemental FRFA.

C. Summary of the FRFA-First Report and Order

4. In the FRFA-First Report and Order, we concluded that incumbent LECs do not qualify as small businesses because they are dominant in their field of operation, and, accordingly, we did not address the impact of the Commission's requirements on incumbent LECs. We noted that the RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

5. We did recognize that the Commission's requirements may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs, including competitive LECs, as well as cellular, broadband personal communications services (PCS), and covered specialized mobile radio (SMR) providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimated that 2,100 carriers could be affected. We also discussed the reporting requirements imposed by the *First Report and Order*.

6. Finally, we discussed the steps we had taken to minimize the impact on small entities, consistent with the Commission's stated objectives. We concluded that our actions in the *First Report and Order* would benefit small entities by facilitating their entry into the local exchange market. We found that the record in this proceeding indicated that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find

it easier to enter the market as a result of number portability, which will eliminate this barrier to entry. We noted that, in general, we attempted to keep burdens on local exchange carriers to a minimum. For example, we adopted a phased deployment schedule for implementation in the 100 largest MSAs, and then elsewhere upon a carrier's request; we conditioned the provision of currently available measures upon request only; we did not require cellular, broadband PCS, and covered SMR providers, which may be small businesses, to offer currently available number portability measures; and we did not require paging and messaging service providers, which may be small entities, to provide any number portability.

D. Summary of the Supplemental FRFA

7. *Implementation Schedule.* In the *First Report and Order,* we required local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability, according to a phased deployment schedule commencing on October 1, 1997, and concluding by December 31, 1998, set forth in Appendix F of the *First Report and Order.* In the *First Order on Reconsideration,* we extended the end dates for Phase I of our deployment schedule by three months, and for Phase II by 45 days. Thus, deployment will now take place in Phase I from October 1, 1997, through March 31, 1998, and in Phase II from January 1, 1998, through May 15, 1998. We also clarified that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. LECs must make available lists of their switches for which deployment has and has not been requested. The parties involved in such requests identifying preferred switches may need to use legal, accounting, economic and/or engineering services.

8. In the *First Order on Reconsideration,* we reduced the burdens on rural and smaller LECs by establishing a procedure whereby, within as well as outside the 100 largest MSAs, portability need only be implemented in the switches for which another carrier has made a specific request for the provision of portability. If competition is not imminent in the areas covered by rural/small LEC switches, then the rural or smaller LEC should not receive requests from competing carriers to implement portability, and thus need not expend its resources until competition does develop. By that time, extensive non-carrier-specific testing will likely have been done, and rural and small LECs need not expend their resources on such testing. We noted that the majority of parties representing small or rural LECs seeking relief asked that we only impose implementation requirements where competing carriers have shown interest in portability. Moreover, our extension of Phases I and II of our deployment schedule may permit smaller LECs to reduce their testing costs by allowing time for larger LECs to test and resolve the problems of this new technology.

9. In the *First Order on Reconsideration,* we rejected several alternatives put forth by parties that might impose greater burdens on small entities and small incumbent LECs. We rejected requests to accelerate the deployment schedule for areas both within and outside the 100 largest MSAs. We also rejected the procedures proposed by some parties that would require LECs to file waiver requests for their specific switches if they believe there is no competitive interest in those switches, instead of requiring LECs to identify in which switches of other LECs they wish portability capabilities. The suggested waiver procedures would burden the LEC from whom portability is requested with preparing and filing the petition for waiver. In addition, a competing carrier that opposes the waiver petition would be burdened with challenging the waiver. In contrast, under the procedure we establish, the only reporting burden on requesting carriers is to identify and request their preferred switches. Carriers from which portability is being requested, which may be small incumbent LECs, only incur a reporting burden if they wish to lessen their burdens further by requesting more time in which to deploy portability. Finally, we clarified that CMRS providers, like wireline providers, need only provide portability in requested switches, both within and outside the 100 largest MSAs.

E. Description and Estimates of the Number of Small Entities Affected by This Second Order on Reconsideration

10. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this Second Supplemental FRFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' Nevertheless, we include small incumbent LECs in our Second Supplemental FRFA. We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

11. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order on Reconsideration.

12. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules

adopted in this *Order on Reconsideration*.

13. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS) Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

14. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

15. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

16. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

17. *Pay Telephone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

18. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

19. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate

that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

20. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 138 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 138 small entity mobile service carriers that may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

21. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small businesses'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

22. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this *Order on Reconsideration*. may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this Supplemental FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Order on Reconsideration*.

23. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Order on Reconsideration* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order on *Reconsideration*.

24. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

F. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. There are no significant reporting, recordkeeping or other compliance requirements imposed on small entities by this *Second Order on Reconsideration* on other entities.

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

26. The Commission's actions in this *Second Order on Reconsideration* will benefit small entities by facilitating their entry into the local exchange market. The record in this proceeding indicates that the lack of number portability would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. These competitive providers, many of which may be small entities, may find it easier to enter the market as a result of number portability which will eliminate this barrier to entry.

27. In general in this docket, we have attempted to keep burdens on local exchange carriers to a minimum. The regulatory burdens we have imposed are necessary to ensure that the public receives the benefit of the expeditious provision of service provider number portability in accordance with the statutory requirements. We believe that the *Second Order on Reconsideration* furthers our commitment to minimizing regulatory burdens on small entities. Based on the record before us, we do not find that any of the recommendations we adopt in the *Second Order on Reconsideration* will have a

disproportionate impact on small entities.

28. *Report to Congress:* The Commission will send a copy of the *Second Order on Reconsideration,* including the Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Fairness Act of 1996. A copy of the *Second Order on Reconsideration* and this Second Supplemental FRFA (or summary thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 98–278]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; interim guidelines.

SUMMARY: On July 18, 1997, the Commission released a draft copy of the Universal Service Worksheet (Worksheet) which requires contributors to list their revenues by certain categories. In response to the release of the draft Worksheet, several wireless telecommunications providers requested clarification on how, for purposes of completing the Worksheet, entities that cannot derive various revenue data directly from their books of account should calculate the requested revenue information. In this document, the Commission addressed the concerns of wireless telecommunications providers with regard to certain aspects of universal service administration.

DATES: Effective: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lori Wright, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on October 26, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

I. Introduction

1. In this Memorandum Opinion and Order (Order), we provide wireless telecommunications providers with interim guidelines for reporting on FCC Form 457, the Universal Service Worksheet (Worksheet) their percentage of interstate wireless telecommunications revenues. Specifically, until we issue final rules regarding the mechanisms that wireless telecommunications providers should use in allocating their wireless telecommunications revenues between the interstate and intrastate jurisdictions, we establish ''safe-harbor'' percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. These percentages can be used for purposes of calculating these providers' federal universal service contribution obligations. We conclude that wireless telecommunications providers that report on the Worksheet a percentage of interstate wireless telecommunications revenues that is less than the ''safe harbor'' percentage established for that category of provider should continue to document how they arrived at their reported percentage and make such information available to the Commission or the universal service Administrator upon request.

Interim Guidelines for Separating Interstate and Intrastate Revenues

2. In this Order, we provide wireless telecommunications providers with additional interim guidance on reporting their wireless interstate telecommunications revenues for purposes of universal service contributions. We share the concern expressed by Comcast and Vanguard that some CMRS carriers presently may have an unreasonable advantage in the market as a result of either unintentional or purposeful under-reporting of their end-user interstate telecommunications revenues. To illustrate, some CMRS providers reported seven percent of their CMRS revenues as interstate, while others reported 28 percent as interstate. We anticipate that the interim safe harbor, in combination with our willingness to inquire about individual carriers' methods for calculating interstate revenues, will address this matter until we develop final rules.

3. The *NECA II Order,* 62 FR 47369 (September 9, 1997), permitted contributors that cannot readily derive interstate revenues from their books of account to provide on the Worksheet good faith estimates of these figures pending final Commission resolution of this issue. The *NECA II Order* also directed such contributors to document how they calculated their estimates and to make such information available to the Commission or Administrator upon request. In this Order, we identify, on an interim basis, suggested, or ''safe harbor,'' percentages that we believe reasonably approximate the percentage of interstate wireless telecommunications revenues generated by each category of wireless telecommunications provider. We identify the safe harbor percentages set forth below in response to the requests of wireless telecommunications providers for specific guidance beyond that provided in the *NECA II Order* and for expeditious resolution of the issues raised by these providers. The safe harbor percentage suggested for each category of provider is set forth below. Wireless telecommunications providers that choose to avail themselves of these suggested percentages may assume that the Commission will not find it necessary to review or question the data underlying their reported percentages. Conversely, a provider that elects to report a percentage of interstate telecommunications revenues that is less than the ''safe harbor'' percentage established for that category of provider should document the method used to calculate its percentage and make that information available to the Commission or Administrator upon request. The Commission retains its authority to require carriers that report interstate revenues below the safe harbors to document, perhaps through traffic studies, the method by which they arrived at their reported percentage of interstate telecommunications revenues.

4. We emphasize that these percentages are intended only to provide guidance to carriers in reporting on the Worksheet their percentage of interstate wireless telecommunications revenues and are not prescriptive in nature. The Commission may elect to adopt final prospective rules that deviate from the interim guidance provided here. Accordingly, we note that our guidance here is an interim measure pending final Commission resolution of these issues.

5. *Cellular, broadband PCS, and digital SMR providers.* We establish a safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent of their total cellular and broadband PCS telecommunications revenues. The Commission, therefore, will not seek supporting data from cellular and broadband PCS providers regarding their reported percentage of interstate telecommunications revenues if they report at least 15 percent of their