

RHODE ISLAND PUBLIC UTILITIES COMMISSION

**In the Matter of the Petition of Dig Safe System, Inc.
For Implementation of 811 as the Abbreviated Dialing
Code for Providing Notification of Excavation
Activities to Underground Facility Operators
within Rhode Island**

**PETITION OF DIG SAFE SYSTEM, INC.
FOR IMPLEMENTATION OF 811
AS THE ABBREVIATED DIALING CODE FOR
PROVIDING NOTIFICATION OF EXCAVATION
ACTIVITIES TO UNDERGROUND FACILITY
OPERATORS WITHIN RHODE ISLAND**

**For Dig Safe System, Inc.
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Dated: December 23, 2005

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TO: THE RHODE ISLAND PUBLIC UTILITIES COMMISSION

Dig Safe System, Inc. ("Dig Safe") hereby petitions the Rhode Island Public Utilities Commission ("PUC") for implementation of 811 as the abbreviated dialing code for providing notification of excavation activities to underground facility operators within Rhode Island.

BACKGROUND

1. Petitioner Dig Safe is a not-for-profit corporation organized under the laws of the Commonwealth of Massachusetts with an office located at 331 Montvale Avenue, Woburn, Massachusetts.

2. Dig Safe is the only notification system that is registered with and certified by the PUC, pursuant to Chapter 39-1.2, Section 4 of the Rhode Island General Laws. R.I.G.L., Chapter 39-1.2-4.

3. Dig Safe is the one-call notification system for excavation activities to underground facility operators serving all of Rhode Island.

REQUIREMENT OF ONE-CALL NOTIFICATION SYSTEMS

4. Chapter 39-1.2 of the Rhode Island General Laws requires the following from Dig Safe’s one-call notification system:

- a. “All public utilities of the state, owning and operating underground facilities, shall, with the assistance of the administrator jointly participate in an association providing for mutual receipt of notification required by 39-1.2-2 and 39-1.2-5.”
- b. “Except as provided in 39-1.2-9, any person, public agency or public utility responsible for excavating within one hundred (100) feet or for discharging explosives within one hundred (100~) feet of a public utility facility shall notify the association of the proposed excavation or discharge **by telephone** at least forty-eight (48) hours, excluding Saturdays, Sundays and holidays, but no more than thirty (30) days before commencing such excavation or discharge of explosives.” and
- c. “The association shall immediately transmit the information to the public utilities whose facilities may be affected.”

R.I.G.L., Chapters 39-1.2-4, 39-1.2-5 (emphasis added).

5. In compliance with these requirements, Dig Safe established 888-DIG-SAFE (888-344-7233) as its toll-free telephone number for receipt of notices from excavators during the appropriate hours of operation.

THE FEDERAL COMMUNICATIONS COMMISSION ISSUED AN ORDER REQUIRING THE USE OF 811 AS THE NATIONAL TOLL-FREE NUMBER FOR ACCESS TO ALL ONE-CALL NOTIFICATION SYSTEMS BY APRIL 13, 2007

6. On April 13, 2005, the Federal Communications Commission (“FCC”) issued Final Rule 47 CFR Part 52 (“the FCC Order”). The FCC Order was published the same day in the Federal Register, and is incorporated herein

by reference. 70 Fed. Reg. 19321 (2005) (to be codified at 47 C.F.R. pt. 52). A copy of the FCC Order is attached at Tab A.

7. The FCC Order states, in relevant part:

“we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems **for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Act.** . . . We also address various implementation issues in this Order. Specifically, we . . . Require the use of 811 as the national abbreviated dialing code for providing advanced notice of excavation activities **to underground facility operators within two years after publication of this Order in the Federal Register (i.e. by April 13, 2007) . . .**”

FCC Order, p. 19321, Tab A (emphasis added).

THE FCC ORDER PROVIDES THAT AS OF MAY 13, 2005, 811 CAN BE USED ONLY FOR ACCESS TO ONE CALL NOTIFICATION SYSTEMS

8. The FCC Order recognized that “the 811 code . . . is being used in several jurisdictions for other purposes” such as “allow[ing] customers to make free repair calls and as a 911 test code.” FCC Order, p. 19323, Tab A.

9. The FCC Order provides that, as of May 13, 2005, the 811 number can be used **only** for access to One Call Centers. Specifically, the FCC Order states:

“Pursuant to section 251(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 251(e)(3), **811 is assigned as the national abbreviated dialing code to be used exclusively for access to One [sic] Call Centers, effective May 13, 2005.**”

FCC Order, p. 19330, Tab A (emphasis added).

THE FCC DELEGATED AUTHORITY OF THE RHODE ISLAND PUBLIC UTILITIES COMMISSION TO ADDRESS TECHNICAL AND OPERATIONAL ISSUES ASSOCIATED WITH THE IMPLEMENTATION OF 811

10. There are several technical and operational issues involved in the implementation of 811 as the toll-free number for access to the one call notification systems. The FCC delegated authority to the PUC to address these issues. Specifically the FCC Order states:

“We . . . delegate authority to the state commissions [such as the PUC], pursuant to section 251 (e), to address the technical and operational issues associated with the implementation of 811.”

FCC Order, p. 19323, Tab A; see also, FCC Order, p. 19324.

11. Pursuant to Title 23 of the Rhode Island General Laws, the PUC has jurisdiction over all telecommunication carriers in Rhode Island. The PUC has been delegated authority by the FCC to address technical and operational issues associated with the implementation of 811. FCC Order, p. 19323, Tab A; see also, FCC Order, p. 19324.

12. In order to implement 811 in the State of Rhode Island, Dig Safe respectfully requests that the PUC order that: (a) as of May 13, 2005, 811 be used exclusively for access to Dig Safe, (b) all telecommunication carriers, including wireline, wireless, and payphone service providers, immediately cease using 811 for any purpose other than providing access to Dig Safe, (c) the telecommunications carriers must use the area code or operating switch to determine whether the calls should be routed to Dig Safe, and (d) all 811 calls for excavations in Rhode Island must be routed by the telecommunications carrier to

a toll-free number (866-892-9177) designated by Dig Safe, to ensure that the caller does not incur toll charges. FCC Order, pp. 19321, 19323, Tab A.

13. A copy of this Petition is being served on the telecommunications companies on the Service List attached at Tab B.

14. No previous application has been made for the relief requested herein.

WHEREFORE, Petitioner respectfully requests that the PUC issue an order:

- (a) Assigning 811 as the national abbreviated dialing code to be used exclusively for access to One Call Centers, effective May 13, 2005;
- (b) Requiring all telecommunications carriers, including wireline, wireless, and payphone service providers, to immediately cease using 811 for any purpose other than providing access to Dig Safe;
- (c) Requiring all telecommunications carriers to use the applicable area codes, operating switches and other available information to route calls for Rhode Island excavations to a toll-free number (866-892-9177) designated by Dig Safe, to ensure that the caller does not incur toll charges; and
- (d) Awarding Petitioner such other and further relief as the PUC deems just and proper.

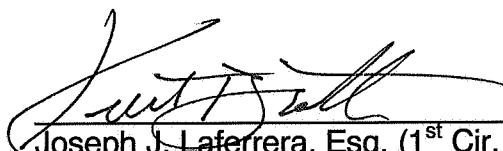
DATED: BOSTON, MASSACHUSETTS

December 23, 2005

Respectfully Submitted,

DIG SAFE SYSTEM, INC.

By its attorneys,



Joseph J. LaFerrera, Esq. (1st Cir. No. 105342)

Kurt E. Bratten, Esq. (1st Cir. No. 105337)

Gesmer Updegrove LLP

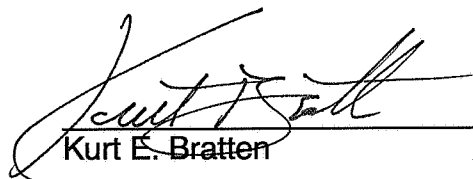
40 Broad Street

Boston, MA 02109

(617) 350-6800

Certificate of Service

I hereby certify that on the 23rd day of December 2005, true copies of the foregoing document were served, via first class mail, upon the telecommunications companies on the Service List attached at Tab B.



Kurt E. Bratten

TAB A

resolution bandwidth of one kilohertz or equivalent.

* * * * *

[FR Doc. 05-7180 Filed 4-12-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 92-105; FCC 05-59]

The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission designates 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act of 2002 (the Pipeline Safety Act). This Order implements the Pipeline Safety Act, which provides for the establishment of a nationwide toll-free abbreviated dialing arrangement to be used by state One Call notification systems.

DATES: Effective May 13, 2005.

FOR FURTHER INFORMATION CONTACT: Regina Brown, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400, TTY (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Sixth Report and Order*, in CC Docket No. 92-105, FCC 05-59, released March 14, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Sixth Report and Order* (6th R&O), released on March 14, 2005, we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Act. This Order implements the Pipeline Safety Act, which provides for the establishment of a nationwide toll-free abbreviated dialing arrangement to be used by state One Call notification systems. A One

Call notification system is a communication system established by operators of underground facilities and/or state governments in order to provide a means for excavators and the general public to notify facility operators in advance of their intent to engage in excavation activities. We also address various implementation issues in this Order. Specifically, we:

- Require One Call Centers to notify carriers of the toll-free or local number the One Call Center uses in order to ensure that callers do not incur toll charges, as mandated by the statute;
- Allow carriers to use either the Numbering Plan Area (NPA)-NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed;
- Require the use of 811 as the national abbreviated dialing code for providing advanced notice of excavation activities to underground facility operators within two years after publication of this Order in the **Federal Register**; and
- Delegate authority to the states, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of the 811 code.

2. The 811 abbreviated dialing code shall be deployed ubiquitously by carriers throughout the United States for use by all telecommunications carriers, including wireline, wireless, and payphone service providers that provide access to state One Call Centers. This designation shall be effective May 13, 2005.

II. Discussion

A. Abbreviated Dialing Arrangements

1. Designation of 811 as a National Abbreviated Dialing Code

3. *Background.* In the *Notice of Proposed Rulemaking*, (NPRM), 69 FR 31930, June 8, 2004, we sought comment on whether to use an N11 code for access to One Call Centers. Specifically, we sought comment on the North American Numbering Council's (NANC) recommendation to assign 811 for this purpose. We also asked commenters to address whether we should incorporate the One Call access service into an existing N11 code, such as 311 or 511, to preserve the remaining unassigned N11 codes. The NANC expressed concern that shared use could cause caller confusion, misrouted calls, and deployment delay. We requested commenters that advocated shared use of an existing N11 code to propose solutions to mitigate the concerns expressed by the NANC.

4. *Discussion.* In this Order, we conclude that an N11 code is the best

solution, within the framework of the statute, for access to One Call Centers. Thus, consistent with the statutory mandate, we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act. In so doing, we reject the other options considered by the NANC and posed in the *NPRM*. We agree with commenters that other alternatives—codes using a leading star or number sign, e.g. *344 or #344 and an Easily Recognizable Code (ERC), such as 344—are impractical, costly to implement, and could delay the availability of a national One Call number for years. Moreover, dialing arrangements in the format of *XXX or #XXX, in as much as these codes include three digits following the leading star or number sign, do not comply with the statute's requirement to utilize a nationwide "three-digit number" to access One Call Centers. We believe that 811 will have less impact on customer dialing patterns and can be implemented without the substantial cost and delay of switch development required with the other proposed alternatives. We also agree with the U.S. Department of Transportation (DOT) that the special nature of an N11 code makes the 811 code amenable to a public education campaign linking it to One Call Centers. We reject APCC's request to exempt payphone service providers from this requirement. In contrast to the Act's clear mandate of a *nationwide* toll-free three-digit code for access to One Call Centers, APCC provides no credible argument for an exemption. The Act does not provide any exemptions from this requirement, and we decline to do so here.

5. Although we recognize that using 811 depletes the quantity of remaining N11 codes assignable for other purposes, using an N11 code to access One Call Centers will consume fewer numbering resources than certain other alternative abbreviated dialing arrangements. Additionally, the use of an N11 code to access One Call services follows the existing conventions for abbreviated dialing already familiar to customers. The N11 architecture is an established abbreviated dialing plan that is recognized by switch manufacturers and the public at large. Most significantly, using an N11 code such as 811 satisfies the legislative mandate for a three-digit nationwide number.

6. We share the concerns of commenters regarding the shared use of an existing N11 code, such as 511 (which is currently used for travel and

information services) or 311 (which is currently used for non-emergency police and other governmental services). In this instance, due to the volume of calls received by state One Call Centers, shared use of an existing N11 code could result in customer confusion and misrouting when dialing a shared N11 code. Thus, excavators could be deterred from using the notification system, thereby reducing the effectiveness of the One Call Centers. The Common Ground Alliance (CGA) estimates that the One Call Centers currently receive approximately 15 million calls annually. It also estimates that 40 percent of the incidents where underground facilities are damaged were caused by those who did not call before digging. CGA contends that the incoming call volume to One Call Centers over the next few years may well exceed 20 million calls. Thus, integration of state One Call Centers with existing N11 systems may also increase implementation costs while adding unnecessary complexity to the One Call notification program. Further, shared use of an existing N11 code for access to state One Call Centers could also delay deployment due to the need to reach agreement with the existing users of the N11 code to be integrated and national advertising efforts to educate users on the shared use of the N11 code. For these reasons, we reject the use of an existing N11 code as opposed to the approach adopted in this Order.

2. Other Abbreviated Dialing Arrangements Considered in the Notice

a. Rejection of 344 as the Abbreviated Dialing Code for One Call Notification

7. *Background.* In the NPRM, we sought comment on DOT's initial proposal to establish the digits "344" or any other mnemonic three-digit dialing arrangement for access to One Call Centers. We tentatively concluded that because 344 corresponds to an ERC, an abbreviated dialing code in the format of an Easily Recognizable Code (ERC) or other area code would be inconsistent with our numbering resource optimization policies by potentially rendering eight million North American Numbering Plan (NANP) telephone numbers unusable. We specifically sought comment on the technical and operational issues raised by the NANC and whether there are existing measures that can address these issues. We also sought comment as to the extent switch development or replacement may be needed and the impact this will have on nationwide implementation.

8. *Discussion.* We conclude that an abbreviated dialing code in the format of an ERC or other area code would be inconsistent with our numbering resource optimization policies by rendering approximately eight million NANP telephone numbers unusable. We agree with commenters that the selection of an ERC for this purpose would not be in the public interest because it would accelerate NANP exhaust. Further, the establishment of 344 as an abbreviated dialing code may cause customer confusion and frustration for customers by misrouting callers to the One Call Center where 344 is a working NXX code. Additionally, from a technical perspective, some switches would require either replacement or development work that could delay the capability of using the 344 code as a three-digit number for a number of years. For example, Verizon comments that vendor development for the affected switches would require new technical specifications, code preparation, installation, testing, and release of generic software release prior to distribution. In light of these technical and practical challenges, we do not establish 344 as the One Call abbreviated dialing code.

b. Rejection of Codes Using a Leading Star or Number Sign for One Call Notification

9. *Background.* In the NPRM, we sought comment on whether a code with a leading star or number sign, in the format of either *XXX or #XXX, should be used to access One Call Centers. We sought comment on the extent to which using a code with a leading star or number sign will either promote or discourage exhaust of the NANP numbers. We asked parties to discuss any existing measures that can mitigate or alleviate the limitations with using a leading star or number sign. We also sought comment on whether calls from wireless customers to One Call Centers should continue to be permitted because of the effort that has gone into wireless implementation of #344 (#DIG).

10. *Discussion.* We agree with commenters that the use of a code with a leading star or number sign, in the format of either *XXX or #XXX, for access to One Call Centers would be too difficult and costly to implement. Most significantly, as indicated above, such a dialing arrangement does not comply with the statute's requirement to utilize a nationwide "three-digit number" to access One Call Centers. Moreover, this abbreviated dialing arrangement would not achieve the uniformity mandated by the Pipeline Safety Act since all users would not be dialing the same sequence

if the code selected includes a star or number sign. A single nationwide abbreviated dialing code for access to One Call Centers will provide the certainty and reliability required for maximum usage and benefits of One Call services. Additionally, many telephone systems use the star and number signs for feature access. Thus, reprogramming these systems may not always be feasible and will involve considerable customer expense. Further, some switching systems may not be capable of processing access codes using a leading star or number sign in the dialing sequences; and the necessary switch development would delay the full implementation of the One Call functionality. Based on the record before us, we conclude that *XXX and #XXX are impractical for use as the national One Call access code and we will not assign a code using a leading star or number sign for access to One Call Centers.

11. Although we recognize the efforts undertaken in the implementation of #344 by some wireless carriers, we disagree with those commenters who advocate the continued and indefinite use of #344 for access to One Call Centers. We agree with DOT that a single nationwide abbreviated dialing code for access to One Call Centers will provide the certainty and reliability required for maximum usage and benefits of One Call services as intended by Congress. The #344 abbreviated dialing arrangement does not comply with the statute's requirement to utilize a nationwide "three-digit number" to access One Call Centers and the statutory mandate that dialing be uniform across the nation. The use of different abbreviated dialing codes for access to state One Call Centers, even if such codes are made available in addition to 811, likely will result in customer confusion as the public use both wireless and wireline telephones. Wireless carriers that currently use #344 shall transition to 811 pursuant to the implementation requirements.

B. Implementation Issues

1. Integration of Existing One Call Center Numbers

12. *Background.* The Pipeline Safety Act expressly mandates use of a three-digit toll-free number to access State One Call Centers. In the NPRM, we sought comment on methods to ensure that calls to One Call Centers are toll-free. We specifically sought comment on the NANC's recommendation that each One Call Center provide a toll-free number, which can be an 8YY number or any number that is not an IntraLATA

toll call from the area to be served, so that callers do not incur toll charges. We also sought comment on whether the dialing sequence should be the same for all providers or whether existing abbreviated dialing sequences should be allowed to continue.

13. *Discussion.* To ensure that calls to One Call Centers are toll-free, we conclude that One Call Centers shall provide to carriers its toll-free number, which can be an 8YY number, or any number that is not an IntraLATA toll call, from the area to be served for use in implementing 811. Thus, when a caller dials 811, the carriers will translate 811 into the appropriate number to reach the One Call Center. This requirement will both simplify call routing and ensure that callers do not incur toll charges, as mandated by the statute. As discussed above, other existing abbreviated dialing sequences shall be discontinued, because the use of other existing abbreviated dialing sequences in addition to 811 does not comply with the statutory mandate that dialing be uniform across the nation.

2. Originating Switch Location

14. *Background.* In establishing a framework for its evaluation of various abbreviated dialing arrangements to implement the Pipeline Safety Act, the NANC proposed that for wireline-originated calls, the originating NPA-NXX would determine the One Call Center to which the call is sent. For wireless-originated calls, the NANC proposed that the originating Mobile Switch Center would determine the One Call Center to which the call is sent. In the NPRM, we sought comment on these proposals.

15. *Discussion.* We direct carriers to use either the NPA-NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed. For wireline-originated calls, the originating switch location or the NPA-NXX will determine the One Call Center to which the call is sent. For wireless-originated calls, the originating Mobile Switch Center will determine the One Call Center to which the call is sent. This approach allows all carriers the flexibility to utilize the most efficient and cost-effective method for routing calls to appropriate state One Call Center and is competitively neutral.

3. Implementation Period

16. *Background.* In the NPRM, we sought comment on several issues relating to how much time carriers should be given to implement a new national abbreviated dialing code. Specifically, we sought comment on

how long the implementation period for each proposed abbreviated dialing arrangement should be. We asked parties to comment on all of the steps that carriers must undertake to prepare the network for use of the three abbreviated dialing arrangements proposed in the NPRM to route properly such calls to the One Call Centers. We also sought comment on what time limit should be given to carriers to vacate any existing uses, if an unassigned N11 code, such as 811, were selected to access One Call Centers. Further, we specifically sought comment on the technical and operational issues that should be considered when determining the time period for implementation that would allow carriers to prepare for use of the proposed abbreviated dialing arrangement that was adopted. We also sought comment on the NANC's recommendation that we allow carriers one to two years to prepare the network to support One Call notification to existing One Call Centers. Additionally, we sought comment on whether the period for implementation should be uniform or variable and based on local conditions and whether, pursuant to section 251(e), we should delegate authority to the states to establish the timeframe for implementation and how best to engage states in the implementation process.

17. *Discussion.* With regard to how much time carriers will need to implement 811, we find that, based on the record before us, two years from publication of this Order in the **Federal Register** is a reasonable time period for implementing 811. Most commenters generally agree that two years is a sufficient period for implementing an N11 code, specifically 811, for access to One Call Centers. Thus, we conclude that calls to One Call Centers using an abbreviated dialing code must use 811 as the national abbreviated dialing code for providing advanced notice of excavation activities to underground facility operators on or before two years from publication of this Order in the **Federal Register**. We defer to the expertise of the carriers, in cooperation with the individual states, to develop and determine the most appropriate technological means of implementing 811 access to One Call services, as dictated by their particular network architectures.

18. Although the Commission has allowed the local use of unassigned N11 codes, it has recognized that this use must be discontinued on short notice. The record indicates that the 811 code, while not formally allocated by a Commission order, is being used in several jurisdictions for other purposes.

For example, 811 is used in some areas to allow customers to make free repair calls and as a 911 test code. Specifically, in some of its states, SBC Communications (SBC) uses 811 as a test code for 911 prior to "turning up" new 911 trunk groups. SBC asserts therefore that designing a new code for testing will take some time because SBC must be able to test new 911 trunk groups to ensure they operate correctly. SBC also currently uses 811 in Connecticut for its business offices. Thus, in certain states, implementing the 811 solution will require time and effort.

19. American Public Communications Council (APCC) also notes that many independent payphone service providers currently use 811 to allow the general public to make free repair calls from payphones. APCC argues that it would be costly to implement 811 because it would require payphones to be reprogrammed and a change of signage informing payphone users of the new repair code. We agree with SBC that where 811 have been used by customers for other purposes, changing the use of that number will require more robust customer education. Additionally, changes to phone books, methods and procedures, and systems will require significantly more time where 811 was previously used for other purposes. For the foregoing reasons, we believe two years provides a reasonable transition period to clear the 811 abbreviated dialing code of any other existing uses, provide customer education, and ensure that there is no unreasonably abrupt disruption of the existing uses.

20. We recognize that states have unique knowledge that will assist in implementing the transition to the One Call Center access set forth in this Order. We therefore delegate authority to the state commissions, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of 811. In delegating authority to the state commissions to address the technical and operational issues, state commissions should also consider whether a carrier may need additional time to implement 811 due to such technical and/or operational difficulties. We agree with Michigan Public Service Commission (MPSC) that state commissions are in the best position to address issues associated with implementing the abbreviated dialing arrangement because many of the One Call Centers were developed by, or under the auspices of, the state commissions. For example, Qwest suggests that states be involved in mediating issues associated with

customer contention in areas where multiple call centers request service in the same geographical area and be delegated authority to assess the qualifications of One Call Centers. We agree. We defer to the expertise of the states to address and resolve such issues. However, we decline to delegate authority to the state commissions, as suggested by California Public Utilities Commission and the People of the State of California (CPUC), to establish the implementation period. We agree with SBC that the statute calls for a nationwide solution and that allowing states to establish the implementation period would not meet this mandate. Therefore, as discussed above, we have established a two year period for implementing 811 as the national abbreviated dialing code for access to state One Call Centers.

III. Procedural Matters

A. Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for this *Order*, set forth at Appendix B.

B. Paperwork Reduction Act Analysis

22. This *Order* does not contain new or modified information collection requirements 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 businesses 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).

C. Further Information

23. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This *Order* can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/cbb/universalservice/highcost>.

Final Regulatory Flexibility Analysis (Report and Order)

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking*

(NPRM). The Commission sought public comments on the proposals in the NPRM, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

25. In this *Order*, we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act of 2002 (the "Pipeline Safety Act"). This *Order* implements the Pipeline Safety Act, which provides for the establishment of a nationwide toll-free abbreviated dialing arrangement to be used by state One Call notification systems.

26. A One Call notification system is a communication system established by operators of underground facilities and/or state governments in order to provide a means for excavators and the general public to notify facility operators in advance of their intent to engage in excavation activities. We also address various implementation issues. Specifically, we require One Call Centers to notify carriers of the toll-free or local number the One Call Center uses in order to ensure that callers do not incur toll charges, as mandated by the statute. We also allow carriers to use either the Numbering Plan Area (NPA) NXX or the originating switch to determine the appropriate One Call Center to which a call should be routed. Further, we require the use of 811 as the national abbreviated dialing code for providing advanced notice of excavation activities to underground facility operators within two years after publication of this *Order* in the **Federal Register**. We also delegate authority to the states, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of the 811 code.

27. The 811 abbreviated dialing code shall be deployed ubiquitously by carriers throughout the United States for use by all telecommunications carriers, including wireline, wireless, and payphone service providers that provide access to state One Call Centers. The designation of 811 for access to state One Call Centers shall be effective thirty days after publication of this *Order* in the **Federal Register**.

E. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

28. In the IRFA, we indicated that we would consider any proposals made to minimize any significant economic impact on small entities. We received no comments directly in response to the IRFA. However, the National Telecommunications Cooperative Association (NTCA) and THG Consultants LLP (THG) filed general comments regarding the possible impact of the implementation of an N11 code on small business entities. Specifically, NTCA asserted that, although implementing 811 as the abbreviated dialing code for accessing the state One Call notification system will not cause its member companies any technical hardships; it will involve some costs and difficulties due to the need to modify switches. While NTCA did not provide detailed information on implementation costs, NTCA contended that the burdens associated with implementation of the 811 code would have a greater impact on smaller companies with limited staffing and a smaller subscriber base. THG argued that if an unassigned N11 code is selected to access One Call Centers, then existing commercial uses of this code should continue for commercial purposes until a qualified entity applies for develops the capability to put the code into use for One Call access. THG is concerned that, where an unassigned N11 code is selected for One Call access, small businesses engaged in commercial activities may be adversely affected and the public deprived of an existing service. The steps taken to minimize economic impact on small entities are discussed below.

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

29. 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 rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

a. Telecommunications Service Entities

(i) Wireline Carriers and Service Providers

30. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

32. *Competitive Local Exchange Carriers, Competitive Access Providers, "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are

"Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are "Other Local Service Providers." Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

33. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

34. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

35. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

36. *Interexchange Carriers.* Neither the Commission nor the SBA has

developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

37. *Operator Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

38. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

(ii) Wireless Telecommunications Service Providers

39. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this

category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

40. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service, or Specialized Mobile Radio Telephony services, which are placed together in the data. We have estimated that 294 of these are small, under the SBA small business size standard.

41. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered

small. In the Paging *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 62 FR 16004, April 3, 1997, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. According to the most recent *Trends in Telephone Service*, 433 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 423 are small, under the SBA approved small business size standard.

42. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the wireless communications services. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

43. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of

wireless telephony. We have estimated that 294 of these are small under the SBA small business size standard.

44. *Broadband Personal Communications Service.* The broadband Personal Communications Service (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 \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards 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 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note 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. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

45. *Narrowband Personal Communications Services.* To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure

meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*, 65 FR 35875, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

46. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only 12 wireless firms out of a total of 1,238 such firms that operated for the entire year, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission

estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

47. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 62 FR 16004, April 3, 1997, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

48. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does 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 no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here,

that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

49. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, 65 FR 17594, April 4, 2000, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

50. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System. The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees

in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

51. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

52. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

53. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under

that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

54. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

55. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas. Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational

institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

56. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

57. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that holds interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3

million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

58. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

59. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

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

60. In the IRFA, we invited comment on any possible costs associated with the abbreviated dialing arrangement ultimately chosen to comply with the Pipeline Safety Act. We received five general, non-IRFA comments in response to this issue. Commenters support the North American numbering Council’s (NANC) recommendation that the cost of implementing a One Call service should not be an unfunded

mandate. Qwest asserts that, although past N11 deployments have not typically involved federal cost recovery, state regulatory commissions are not uniform in the way in which they resolve cost recovery matters associated with N11 deployments. Specifically, the American Public Communications Council (APCC) contends that if payphone service providers are not excluded from the statutory mandate, then they should also be compensated for such calls.

61. While we recognize that there may be some costs associated with implementation of the 811 code, we have not specified parameters for cost recovery in this Order. The Pipeline Safety Act did not provide for federal financial support as part of the mandate for a nationwide abbreviated dialing arrangement for access to One Call Centers. Therefore, we find that the Congressional mandate and benefits of a national N11 code assignment, specifically 811, outweigh any concerns regarding cost recovery on the federal level. These issues are most appropriately addressed by the state and local governments. As indicated above, we believe that state commissions are in the best position to address issues associated with implementing 811 because many of the One Call Centers were developed by, or under the auspices of, the state commissions.

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

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

63. In adopting 811 as the national abbreviated dialing code for access to One Call Centers, we have taken steps to minimize the impact on small entities. The overall objective of this proceeding was to assess possible abbreviated dialing arrangements to use to access state One Call Centers as mandated by the Pipeline Safety Act, while at the same time, seeking to minimize any adverse impact on

numbering resources. We, therefore, sought comment on various abbreviated dialing arrangements, including those considered and recommended by the NANC, that could be used by state One Call notification systems in compliance with the Pipeline Safety Act while at the same time minimizing, to the extent possible, any adverse impact on numbering resources, including any impact on small entities.

64. After reviewing the comments and considering the possible abbreviated dialing arrangements that could be used by state One Call notification systems in compliance with the Pipeline Safety Act, we conclude that an N11 code is the best solution, within the framework of the statute, for access to One Call Centers. Thus, consistent with the statutory mandate, we designate 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Act. We agree with commenters that the other proposed alternatives—codes using a leading star or number sign, e.g. *344 or #344, and the establishment of an Easily Recognizable Code (ERC), such as 344, as an abbreviated dialing code are impractical, costly to implement, and could delay the availability of a national One Call number for years. Moreover, this abbreviated dialing arrangement would not achieve the uniformity mandated by the Pipeline Safety Act since all users would not be dialing the same sequence if the code selected includes a star or number sign. We believe that 811 will have less impact on customer dialing patterns and can be implemented without the substantial cost and delay of switch development required with other proposed alternatives.

65. Although we recognize that using 811 depletes the quantity of remaining N11 codes assignable for other purposes, using an N11 code to access One Call Centers will consume fewer numbering resources than certain other alternative abbreviated dialing arrangements. Additionally, the use of an N11 code to access One Call services follows the existing conventions for abbreviated dialing already familiar to customers. The N11 architecture is an established abbreviated dialing plan that is recognized by switch manufacturers and the public at large. Most significantly, using an N11 code such as 811 satisfies the legislative mandate for a three-digit nationwide number.

66. Further, although the Commission has allowed the local use of unassigned N11 codes, it has recognized that this

use must be discontinued on short notice. In order to minimize the impact of our action, including the impact on small business entities, we provide a two year period, from publication of this *Order* in the **Federal Register**, for implementing the 811 code. Based on the record before us, we believe two years from publication of this *Order* in the **Federal Register** is a reasonable time period for implementation of 811. The alternative of not providing for a transition period was considered but rejected because we believe a transition period is necessary to provide all telecommunications carriers, including wireline, wireless, and payphone service providers, sufficient time to make the necessary network modifications or upgrades, as well as integrate existing One Call notification systems, thus minimizing any adverse or unfair impact on smaller entities. In addition, this transition period will give carriers time to clear this number of any other existing uses, provide customer education, and ensure that there is no unreasonably abrupt disruption of the existing uses.

I. Publication of FRFA

67. The Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

68. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this *Sixth Report and Order* is adopted.

69. Pursuant to section 251(e)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 251(e)(3), 811 is assigned as the national abbreviated dialing code to be used exclusively for access to Once Call Centers, effective May 13, 2005.

70. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. The Commission will not send a copy of this *Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because no rules were adopted or changed.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–7179 Filed 4–12–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 05–28]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; clarification.

SUMMARY: This document addresses certain issues raised in petitions for reconsideration of regarding the national do-not-call registry and the Commission's other telemarketing rules implementing the Telephone Consumer Protection Act (TCPA).

DATES: Effective May 13, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica McMahon, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Order on Reconsideration*, CG Docket No. 02–278, FCC 05–28, adopted February 10, 2005, and released February 18, 2005 (*Order*). The *Order* addresses issues arising from *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, (2003 TCPA Order), CG Docket No. 02–278, FCC 03–153, released July 3, 2003; published at 68 FR 44144, July 25, 2003. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain 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). Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC

20054. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at its Web site: <http://www.bcpweb.com> or call 1–800–378–3160. 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) or (202) 418–0432 (TTY). The *Order* can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy>.

Synopsis

In the 2003 TCPA Order, the Commission adopted a national do-not-call registry, in conjunction with the FTC, to provide residential consumers with a one-step option to prohibit unwanted telephone solicitations. Telemarketers are prohibited from contacting those consumers that register their telephone numbers on the national list, unless the call falls within a recognized exemption. We explained that calls that do not fall within the definition of “telephone solicitation” as defined in section 227(a)(3) are not restricted by the national do-not-call list. These may include surveys, market research, political and religious speech calls. The national do-not-call rules also do not prohibit calls by or on behalf of tax-exempt nonprofit organizations, calls to persons with whom the seller or telemarketer has an established business relationship, calls to businesses, and calls to persons with whom the marketer has a “personal relationship.”

A number of petitioners raise questions related to the administration and operation of the national do-not-call registry. The DMA requests that the Commission review the national do-not-call registry set up by the FTC and reconsider our rules to impose more reasonable security procedures for the registry. In addition, the DMA asks the FCC to require the DNC list administrator to provide a mechanism by which callers can download the national list without wireless numbers. Several other petitioners request that the Commission reconsider the extent to which states may apply their do-not-call requirements to interstate telemarketers. We note that, since the close of the filing period for petitions for reconsideration, the Commission has received several petitions for declaratory ruling seeking preemption of state telemarketing laws. The

TAB B

SERVICE LIST

1. AT&T – EILEEN ARMSTRONG, 158 STATE ST., ALBANY, NY, 12207
2. AT&T LOCAL SERVICES – RHODE ISLAND – MIKE BYRNE, 275 PROMENADE ST., PROVIDENCE, RI 02908
3. ABOVE NET, INC – NEIL BRESHAHAN, 1 SUMMER ST., SUITE 704, BOSTON, MA 02110
4. BROADWING COMMUNICATIONS – JAMIE SEARCY, 1122 CAPITAL OF TEXAS HWY 5, AUSTIN, TX 78746
5. CONVERSENT COMMUNICATIONS, LLC – JAMES MILLIGAN, 670 N. COMMERCIAL ST., MANCHESTER, NH 03101
6. FIBERTECH NETWORKS – MATT SCHWAN, 140 ALLENS CREEK RD., ROCHESTER, NY 14618
7. LEVEL 3 COMMUNICATIONS – AURA BULLURAN, 1025 ELDORADO BLVD., BROOMFIELD, CO 80021
8. MCI – ROBERT PUMPHRET, PO BOX 600, CHARLTON, MA 01507
9. NEES COMMUNICATIONS, INC – RICK PREDELLA, 25 RESEARCH DR., WESTBOROUGH, MA 01582
10. NEON COMMUNICATIONS – MICHAEL MCCONVILLE, 2200 W. PARK DR., WESTBORO, MA 01581
11. QUEST COMMUNICATIONS – BETH MACLAURIN, 555 17TH ST., 9 FLOOR, DENVER, CO 80202
12. SPRINT – ART YORK, 9350 METCALF AVE., OVERLAND PARK, KS 66212
13. VERIZON – KATHLENE DUMAINE, 900 ELM ST., MANCHESTER, NH 03101
14. WILTEL COMMUNICATIONS – TARA GLASCO, 1 TECHNOLOGY CTR – 115, TULSA, OK 74103