

available through Air Docket A-2000-18 reference number IV-D-79. The table consolidates information obtained in response to the proposal along with information collected during the development of the documents outlined above. EPA is soliciting comment on the accuracy of the information presented in the table. In addition to obtaining comments on the accuracy of the information provided, the Agency would like to know if there any other foam applications that use HCFC blowing agents but are not listed in the table.

3. Where Can I Get the Information?

All of the information can be obtained through the Air Docket (see **ADDRESSES** section above for docket contact info). The reports covering the polystyrene, spray, sandwich panels and other foam applications can be obtained through the docket. Reference numbers are as follows:

- Synopsis of comments received from the extruded polystyrene industry: Air Docket A-2000-18 reference number IV-D-77
- Overview of challenges facing the polyurethane spray foam industry and other systems house based applications: Air Docket A-2000-18 reference number IV-D-78
- (a) Comments from the polyurethane systems houses (non-spray foam): Air Docket A-2000-18 reference number IV-D-78a
- (b) Comments from the polyurethane spray foam systems houses and contractors: Air Docket A-2000-18 reference number IV-D-78b

4. How Is This Action Related to the July 11, 2000 Proposed Rule?

We are soliciting comment to ensure that we use the best information available when making final decisions regarding the July 11, 2000 proposal. Because the information provided in this **Federal Register** document will be used by EPA to addresses comments received on the proposal, the Agency is providing the public with an opportunity to comment on the quality of the available information. This information will be used to ensure that issues relating to the technical viability of alternatives and industry impacts are fully considered by EPA prior to moving forward with a rulemaking in the foams sector.

5. What Is EPA Not Taking Comment On?

EPA is only accepting comments on accuracy and completeness of the information outlined in today's **Federal**

Register Notice. EPA is *not* accepting comment on the following:

- HCFC foams proposal published on July 11, 2000 (65 FR 42653)
- HCFC production phaseout established in EPA's December 10, 1993 rulemaking (58 FR 65018)
- Allowance System for Controlling HCFC Production, Import and Export (draft proposal that may be published during comment period on this NODA)

6. What Supporting Documentation Do I Need To Include in My Comments?

Please provide any published studies or raw data supporting your position.

Dated: May 4, 2001.

Paul Stolpman,

*Director, Office of Atmospheric Programs,
Office of Air and Radiation.*

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[FCC 01-132; CC Docket No. 01-92]

Intercarrier Compensation; Reciprocal Compensation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on the concept of a unified intercarrier compensation regime, including alternative approaches such as "bill and keep." It addresses intercarrier compensation-related problems arising from the introduction of local competition, and of new services and technologies, into telecommunications markets.

DATES: Submit comments on or before August 21, 2001, and submit reply comments on or before October 5, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, Room TW-B204, 445 12th Street, SW., Washington, DC 20554. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS) via the Internet at <http://www.fcc.gov/e-file/ecfs.html>. See "Comment Filing Procedures," below, for more detailed instructions on filing comments and reply comments in this proceeding.

FOR FURTHER INFORMATION CONTACT: Jane Jackson, Chief, Competitive Pricing

Division, Common Carrier Bureau, (202) 418-1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in CC Docket No. 01-92, FCC 01-132, adopted April 19, 2001, and released April 27, 2001. The full text of the *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The full text of the *NPRM* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C. 20036, telephone (202) 857-3800, facsimile (202) 857-3805. The full text of the *NPRM* may also be downloaded at: <http://www.fcc.gov/Bureaus/CommonCarrier/Notices/2001/fcc01132.doc>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at mcontee@fcc.gov.

Synopsis of the Notice of Proposed Rulemaking

The *NPRM* seeks comment on the appropriate goals for a new intercarrier compensation regime, including efficient use of the network, and efficient investment in, and deployment of, network infrastructure (including investment in broadband). The *NPRM* seeks comment on the extent to which any proposed regime achieves technological and competitive neutrality, while minimizing regulatory intervention. It also seeks comment on the feasibility of a new regime, the relative trade-offs, and the importance of having a unified regime altogether.

The *NPRM* seeks comment on certain assumptions about intercarrier compensation. For example, do both parties benefit from a call, despite the current regime's simplifying requirement for originating callers to pay for both origination and termination? What is the extent to which terminating carriers have monopoly power over loop access? How much does that bill and keep avoid regulatory intervention in the allocation of common costs, and empower end users to exercise direct control over their access arrangements?

The *NPRM* seeks comment on the relative efficiencies of bill-and-keep arrangements. It questions the validity of the Commission's previous determination that bill and keep is only efficient when there are no traffic-sensitive costs of termination, and only

permissible when traffic between two networks is relatively balanced while the rates are symmetric. It asks whether bill and keep would preclude efficient forms of price discrimination (e.g., differential rates for network cost recovery). Furthermore, the *NPRM* seeks comment on how to address the treatment of transport costs, including approaches proposed by two Commission staff working papers that are discussed in the *NPRM*. It also seeks comment on the relative sizes of transactions costs (i.e., measuring and billing) for the various alternatives, and the impact of bill-and-keep on the opportunities for regulatory arbitrage that currently exist in, e.g., Internet telephony, termination of ISP-bound traffic, and terminating access charges for interstate voice traffic.

The *NPRM* also seeks comment on the potential disadvantages of a bill-and-keep arrangement, including: (a) Incentives for carriers to locate central offices inefficiently; (b) how to determine the incremental cost of interconnection when networks are less-than-fully provisioned; (c) the potential for unwanted calls to increase; and (d) the potential for ISPs to begin to charge traffic-sensitive rates or higher flat rates to end users.

With regard to specific services, the *NPRM* seeks comment on whether the Commission should adopt bill and keep for ISP-bound traffic. The *NPRM* asks about local exchange carrier (LEC) cost recovery, and any effects on unbundled network element (UNE) pricing, if the Commission should move to a bill-and-keep regime for all ISP-bound traffic.

The *NPRM* also seeks comment on the relative benefits of bill and keep for all traffic subject to section 251(b)(5) of the Communications Act of 1934 ("the Communications Act"), versus the current per-minute reciprocal compensation rates imposed by most states. The *NPRM* specifically addresses issues concerning points of interconnection, three-carrier calls, and the question of whether bill-and-keep rate structures satisfy the requirements of sections 251(b)(5) and 252(d)(2) of the Communications Act.

In addition, the *NPRM* seeks comment on the Commission's legal authority over interconnection between LECs and commercial mobile radio services (CMRS) under section 332 of the Communications Act, and on the adoption of a new LEC-CMRS intercarrier compensation regime. With regard to interstate access charges, the *NPRM* seeks comment on the eventual application of a bill-and-keep regime, and asks whether it is appropriate to

phase in a new access charge regime in stages.

Apart from moving to a bill-and-keep regime, the *NPRM* seeks comment on whether the existing calling-party's-network-pays regime could be reformed to address the problems that motivate this rulemaking. As such, it seeks comment on rate level issues (e.g., identifying "additional costs" under section 252(d)(2) of the Communications Act, and applying presumptive ILEC cost proxies), rate structure issues, single point of interconnection issues, virtual central office codes, and administrative feasibility.

The *NPRM* also seeks comment on the impacts of moving to a new regime on end user rates, and universal service. Furthermore, it seeks comment on legal issues concerning the authority for a new regime, together with the effect of proposals for a unified regime on the division of jurisdictional responsibility between the Commission and the states.

Finally, the *NPRM* seeks comment on the impact of a new regime on interconnection agreements between international carriers, and on interconnection agreements between Internet backbones. It asks about the potential impact on small entities that may result from the adoption of a new regime. It concludes by seeking comment on any further possible approaches to intercarrier compensation that are not addressed in the *NPRM*.

Regulatory Flexibility Act Final Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. See *id.*

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

The existing intercarrier compensation regime applies different sets of rules to different types of carriers and to different types of traffic. Basically, this patchwork of rules can be

broken down into: (1) reciprocal compensation rules, which apply to the exchange of local traffic; and (2) access rules that apply to traffic exchanged between local carriers and long-distance carriers. Both sets of rules are "calling-party's-network-pays" (CPNP) arrangements (i.e., they require the calling party's network to pay the called party's network to terminate a call). Both sets of rules are also subject to numerous exceptions, such as the enhanced service provider (ESP) exemption from access charges.

This *NPRM* is motivated by numerous problems that have appeared recently concerning the existing rules governing intercarrier compensation. A primary concern is the opportunity, under the current regime, for profit-seeking behavior to take advantage of cost or revenue disparities that are due solely to regulation. For example, competitive local exchange carriers (CLECs) often target Internet service providers (ISPs) as customers in order to become net-recipients of traffic, and thus profit from reciprocal compensation revenues. Similarly, Internet Protocol (IP) telephony threatens to erode access revenues for LECs because it is exempt from the access charges that traditional long-distance carriers must pay. Another major concern is that local carriers possess monopoly power over terminating access. As a result, CLECs often impose access charges that far exceed the regulated access charges of incumbent LECs. Finally, the current regime can generate inefficient traffic-sensitive end-user rates, and can also create incentives for entities to claim to be networks in order to qualify for interconnection, rather than to simply subscribe as a customer.

II. Legal Basis

The legal basis for any action that may be taken pursuant to the *NPRM* is contained in sections 4, 201–202, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–202, 303 and 403, and sections 1.1, 1.411 and 1.412 of the Commission's rules, 47 CFR 1.1, 1.411 and 1.412.

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

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization" and "small business concern" under section 3 of the Small Business Act. 5

U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 5 U.S.C. 632.

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this NPRM.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. In a recent news release, the Commission indicated that there are 4,822 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories, and the number of small businesses in each. We then attempt to further refine those estimates to correspond with the categories of

telephone companies that are commonly used under our rules.

We have included small incumbent LECs (small ILECs) 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 ILECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Total Number of Telephone Companies Affected. The U.S. Bureau of the Census ("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, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs 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 is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the new rules.

Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (*i.e.*, 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 the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more 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 ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus 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 the SBA's definition. Consequently, we estimate 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by rules adopted pursuant to this NPRM.

Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,335 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,335 or fewer providers of local exchange service are small entities or small ILECs that may be affected by the new rules.

Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 204 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 204 or fewer small-entity IXCs that may be affected by rules adopted pursuant to this NPRM.

Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 349 CAP/CLEC carriers and 60 other LECs reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 349 or fewer small-entity CAPs and 60 or fewer other LECs that may be affected by rules adopted pursuant to this NPRM.

Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 21 or fewer small-entity operator service providers that may be affected by rules adopted pursuant to this NPRM.

Pay Telephone Operators. Neither the Commission nor the 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 (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 758 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500

employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 758 or fewer small-entity pay telephone operators that may be affected by rules adopted pursuant to this NPRM.

Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (*i.e.*, wireless) companies. According to the most recent *Trends in Telephone Service* data, 454 toll and 87 local entities reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 454 or fewer small-toll-entity resellers and 87 or fewer small-local-entity resellers that may be affected by rules adopted pursuant to this NPRM.

Toll-Free 800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 7,692,955 or fewer small-entity 800 subscribers, 7,706,393 or fewer small-entity 888 subscribers, and 1,946,538 or fewer small-entity 877 subscribers that may be affected by rules adopted pursuant to this NPRM.

Cellular Licensees. Neither the Commission nor the SBA has developed

a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (*i.e.*, wireless) companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, we do not know the number of cellular licensees, since a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to recent data, 808 carriers reported that they were engaged in the provision of either cellular or PCS services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 808 small cellular service carriers.

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 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of 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 definition under the SBA rules applicable to radiotelephone communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to a 1995 estimate by the Bureau of the

Census, only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, assuming that this general ratio has not changed significantly in recent years in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

220 MHz Radio Service-Phase II Licensees. 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 15978, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as 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 defined as 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 definitions. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. Nine hundred and eight (908) licenses were auctioned in three different-sized geographic areas: 3 nationwide licenses, 30 Regional Economic Area Group (REAG) licenses, and 875 Economic Area (EA) licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: 1 of the Nationwide licenses, 67% of the Regional licenses, 47% of the REAG licenses and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A second 220 MHz Radio Service auction began on June 8, 1999 and closed on June 30, 1999. This auction offered 225 licenses in 87 EAs and 4 REAGs. (A total of 9 REAG licenses and 216 EA licenses. No nationwide licenses were available in this auction.) Of the 215 EA licenses won, 153 EA licenses (71%) were won by bidders claiming small business status. Of the 7 REAG licenses won, 5 REAG licenses (71%) were won by bidders claiming small business status.

Private and Common Carrier Paging. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either: (1) An entity that, together with its affiliates

and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to recent data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 172 small paging carriers. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (*i.e.*, wireless) companies, and recent data show that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services. Consequently, we estimate that there are no more than 172 small mobile service carriers.

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 business" was added and is defined as an entity that, together with 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 C block 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. On March 23, 1999, the Commission held another auction (Auction No. 22) of C, D, E and F block licenses for PCS spectrum returned to the Commission by previous license holders. In that auction, 48 bidders claiming small business, very small business or entrepreneurial status won 272 of the 341 licenses (80%) offered. Based on this information, we conclude that the number of small broadband PCS licensees includes the 90 winning C block bidders, the 93 qualifying bidders in the D, E and F blocks, and the 48 winning bidders from Auction No. 22, for a total of 231 small-entity PCS providers as defined by the SBA and the Commission's auction rules.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have no more than 1,500 employees, and no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for our purposes here, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify

as small entities under the SBA's definition.

Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *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 definition.

Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) "small entities," those with revenues of no more than \$15 million in each of the three previous calendar years; and (2) "very small entities," those with revenues of no more than \$3 million in each of the three previous calendar years. The regulations defining "small entity" and "very small entity" in the context of 800 MHz SMR (upper 10 MHz and lower 230 channels) and 900 MHz SMR have been approved by the SBA. 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. We assume, for our 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 (upper 10 MHz) and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auction. Of the 1,020 licenses won in the 900 MHz auction, 263 licenses were won by bidders qualifying as small and very small entities. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities.

Marine Coast Service. Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of this auction, and for future public coast auctions, the Commission defines a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. A "very small" business is one that, together with

controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the Commission's definition, which has been approved by the SBA.

Fixed Microwave Services. 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 yet defined a small business with respect to microwave services. For our purposes here, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. Under this definition, we estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities.

Local Multipoint Distribution Service. The Commission held two auctions for licenses in the Local Multipoint Distribution Services (LMDS) (Auction No. 17 and Auction No. 23). For both of these auctions, the Commission defined a small business as an entity, together with its affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million. Of the 144 winning bidders in Auction Nos. 17 and 23, 125 bidders (87%) were small or very small businesses.

24 GHz—Incumbent 24 GHz Licensees. The rules that we may later adopt could 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 Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry, providing that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only

12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information 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. Both Teligent and TRW, Inc. appear to have more than 1,500 employees. Therefore, it appears that no incumbent licensee in the 24 GHz band is a small business entity.

Future 24 GHz Licensees. The rules that we may later adopt could also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined "small business" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than \$40 million in the three previous calendar years. This regulation defining "small business" in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, we shall use this definition of "small business" and apply it to the 24 GHz band under the name "entrepreneur." With regard to "small business," we shall adopt the definition of "very small business" used for 39 GHz licenses and PCS C and F block licenses: businesses with average annual gross revenues for the three preceding years not in excess of \$15 million. Finally, "very small business" in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed \$3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

39 GHz. The Commission held an auction (Auction No. 30) for fixed point-to-point microwave licenses in the 38.6 to 40.0 GHz band (39 GHz Band). For this auction, the Commission defined a small business as an entity, together with affiliates and controlling interests, having average gross revenues for the three preceding years of not more than \$40 million. A very small business was defined as an entity, together with affiliates and controlling principals, having average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these definitions. Of the 29 winning bidders in Auction No. 30, 18 bidders (62%) were small business participants.

Multipoint Distribution Service (MDS). This service involves a variety of transmitters, which are used to relay

data and programming to the home or office, similar to that provided by cable television systems. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business.

MDS is also heavily encumbered with licensees of stations authorized prior to the MDS auction. SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes MDS systems, and thus applies to incumbent MDS licensees and wireless cable operators which may not have participated or been successful in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this analysis, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

Wireless Communications Services (WCS). This service can be used for fixed, mobile, radio-location and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one

winning bidder that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

General Wireless Communication Service (GWCS). This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of "small business" for GWCS in this band. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than \$40 million. By letter dated March 30, 1999, NTIA reclaimed the spectrum allocated to GWCS and identified alternative spectrum at 4940–4990 MHz. On February 23, 2000, the Commission released its *Notice of Proposed Rulemaking* in WT Docket No. 00–32 proposing to allocate and establish licensing and service rules for the 4.9 GHz band.

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

There are certain transaction costs for terminating access, including measuring and billing. Under the existing CPNP regime, the terminating LEC bills the originating network, whereas under bill and keep, the terminating LEC may bill its own customers. The *NPRM* seeks comment on the relative transaction costs of each proposal, weighed against the other efficiencies of the various alternatives. Transaction costs can increase under a bill-and-keep arrangement, for example, since each carrier may be responsible for measuring and billing its own customers for all traffic, rather than merely measuring and billing the originating carrier.

Apart from the transaction costs for termination, the *NPRM* more broadly suggests that a new regime could free regulators from allocating transport costs, and from setting the level and structure of termination rates. Where rates had once been set by regulation, individual carriers, including small entities, could inherit this responsibility.

As a result of rules from this proceeding, incumbent LECs and CLECs may be required to discern the amount of traffic carried on their networks that is bound for ISPs. In addition, such incumbent LECs and competitive

entrants may be required to produce information regarding the costs of carrying ISP-bound traffic on their networks.

The *NPRM* seeks comment on the extent to which a new regime would comply with reciprocal compensation obligations regarding traffic balances and symmetrical rates. If rules should follow on this issue, they may require carriers to report traffic imbalances, corresponding to rate symmetry. This is especially true in the context of LEC-CMRS interconnection, in which the *NPRM* seeks comment on the feasibility of cost studies that CMRS carriers could use to justify separate treatment.

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

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

Although the transaction costs for terminating access can increase under a bill-and-keep arrangement, the impact on small entities would be minimal since measuring and billing is already a fundamental component of their operations. Furthermore, the advantages of a bill-and-keep regime, in providing clearer demarcations of cost between carriers, appear to outweigh the minimal increase in transaction costs that could occur under bill and keep. With regard to the related task of allocating transport costs, the same reasoning applies to small entities in that the clearer demarcations between carriers inherent in bill and keep outweighs the potential burden of setting the level and structure of termination rates. Regardless, many small entities are competitive entrants such as CLECs, which currently enjoy specific exemptions from ILEC rate regulation.

A potential benefit may accrue to small-entity LECs transporting ISP-bound traffic. As discussed above, the Commission may adopt rules that may require incumbent LECs and CLECs to discern the amount of traffic carried on their networks that is bound for ISPs. As

a result of such rules, incumbent LECs and CLECs, including small-entity incumbent LECs and CLECs, will be able to receive compensation for the delivery of ISP-bound traffic that they might not otherwise receive. The *NPRM* separately requests comment on alternative proposals.

The *NPRM* seeks comment on the issue of asymmetrical compensation for unbalanced traffic. Although small entities could experience an increase in reporting and recordkeeping when submitting cost studies to this effect, if adopted, such a requirement would more accurately serve the revenue requirements of small entities in relation to larger competitors.

Finally, the *NPRM* seeks comment on additional impacts on small entities that may result from any new intercarrier compensation regime. When seeking comment on the alternative of contractual arrangements for intercarrier compensation, the *NPRM* asks commenters to address the potential impacts of such a market-based approach on small entities, such as the refusal to carry traffic.

VI. Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

None.

Comment Filing Procedures

Pursuant to sections 1.415, 1.419, and 1.430 of the Commission's rules, 47 CFR 1.415, 1.419, 1.430, interested parties may file comments within 90 days after publication in the **Federal Register**, and reply comments within 135 days after publication in the **Federal Register**. All filings should refer to CC Docket No. 01-92. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is CC Docket No. 01-92. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of

each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, Room TW-B204, 445 12th Street, SW., Washington, DC 20554. Regardless of whether parties choose to file electronically or by paper, parties should also serve: (1) Paul Moon, Common Carrier Bureau, 445 12th Street, SW., Room 3-C423, Washington, DC 20554; (2) Jane Jackson, Common Carrier Bureau, 445 12th Street, SW., Room 5-A225, Washington, DC 20554; and (3) the Commission's copy contractor, International Transcription Service, Inc. (ITS), 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 857-3800, with copies of any documents filed in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Wanda Harris, Common Carrier Bureau, 445 12th Street, SW., Room 5-A452, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in a Windows-compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number—in this case, CC Docket No. 01-92), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the

length of their submission. We also strongly encourage that parties track the organization set forth in the *NPRM* to facilitate our internal review process.

Pursuant to 47 CFR 1.200(a), which permits the Commission to adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires, we announce that this proceeding will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. Designating this proceeding as "permit-but-disclose" will provide an opportunity for all interested parties to receive notice of the various technical, legal, and policy issues raised in *ex parte* presentations made to the Commission in the course of this proceeding. This will allow interested parties to file responses or rebuttals to proposals made on the record in this proceeding. Accordingly, we find that it is in the public interest to designate this proceeding as "permit-but-disclose."

Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in section 1.206(b) as well. Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission Secretary, Magalie Roman Salas, 445 12th Street, SW., TW-B204, Washington, DC 20554, and serve with copies: (1) Paul Moon, Common Carrier Bureau, 445 12th Street, SW., Room 3-C423, Washington, DC 20554; (2) Jane Jackson, Common Carrier Bureau, 445 12th Street, SW., Room 5-A225, Washington, DC 20554; and (3) International Transcription Service, Inc. (ITS), 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 857-3800.

Because many of the matters on which we request comment in this *NPRM* may call on parties to disclose proprietary information such as market research and business or technical plans, we suggest that parties consult 47 CFR 0.459 about the submission of confidential information.

Ordering Clauses

The actions of the Commission herein ARE TAKEN pursuant to sections 4, 201-202, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201-202, 303

and 403, and sections 1.1, 1.411 and 1.412 of the Commission's rules, 47 CFR 1.1, 1.411 and 1.412.

The Commission's Consumer Information Bureau, Reference

Information Center, Shall Send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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