

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
*	*	*
*	*	*
*	*	*

- (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, BMW possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(A), does not meet the delisting requirements of Condition (1), BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing BMW with an opportunity to present information as to why the proposed action is not necessary. BMW shall have 10 days from the date of EPA's notice to present such information.
- (E) Following the receipt of information from BMW, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.
- (7) *Notification Requirements:* BMW must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

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FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 04-12]

RIN 3072-AC30

Non-Vessel Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.
ACTION: Proposed rulemaking; extension of time.

SUMMARY: The Commission by Notice of Proposed Rulemaking published November 3, 2004 (69 FR 63981) proposed an exemption from the tariff publication requirements of the Shipping Act of 1984 for service arrangements made by non-vessel-operating common carriers, subject to the conditional filing requirements set forth in this new Part. The Commission has received and determined to grant a request from the Department of Justice,

for an extension of time to November 30, 2004 to file comments in this proceeding.

DATES: Comments are now due November 30, 2004. Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001; (202) 523-5725, e-mail: Secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573-0001; (202) 523-5740, e-mail: GeneralCounsel@fmc.gov; and Austin L. Schmitt, Director, Office of Operations, Federal Maritime Commission, 800 North Capitol Street,

NW., Room 1078, Washington, DC 20573-0001, (202) 523-0988.

Bryant L. VanBrakle,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[ET Docket No. 04-35; FCC 04-188]

Disruptions to Communications

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document expands the record in this proceeding to focus specifically on the unique communications needs of airports, including wireless and satellite communications. In this regard, we request comment on the additional types of airport communications (e.g.,

wireless, satellite) that should be required to file service disruption reports—particularly from a homeland security and defense perspective. These types of airport communications may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports (GA) and, if so, what the applicable threshold criteria should be.

DATES: Comments must be filed on or before January 25, 2005, and reply comments February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Charles Iseman at (202) 418-2444, charles.iseman@fcc.gov, Office of Engineering and Technology, TTY (202) 418-2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking*, portion of the Report and Order and Further Notice of Proposed, ET Docket No. 04-35, FCC 04-188, adopted August 4, 2004, and released August 19, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded from the Commission's Web site: <http://hraunfoss.fcc.gov/edocspublic/attachmatch/FCC-04-30A1.doc>. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 25, 2005, and reply comments on or before February 24, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. 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, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. 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 paper filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Further Notice of Proposed Rulemaking

1. The Further Notice of Proposed Rulemaking (FNPRM) was initiated to expand the record in this proceeding to focus specifically on the unique communications needs of airports. In this regard, we request comment on the additional types of airport communications (e.g., wireless, satellite) that should be subject to service disruption reports, particularly from the perspective of homeland security and national defense. These communications may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports and, if so, what the applicable threshold criteria should

be. Based on the comments that the Commission receives in this proceeding and on its analysis of the information that is before it, the Commission may make such additional modifications to its communications outage-reporting requirements for special offices and facilities, with respect to airports, as may be necessary or desirable to fulfill, more fully, the objectives that are set forth in the Communications Act.

2. *Airports that Qualify as Special Offices and Facilities, Pertinent Outage-Reporting Criteria, and Proposed Revisions.* Section 4.5(b) of the Commission's rules (adopted by the Report and Order in this proceeding, but not yet in effect) includes as "special offices and facilities" those airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airports Systems (NPIAS) (as issued at least one calendar year prior to the outage). Section 4.9 of the Commission's rules (also not yet in effect) requires communications providers to report outages of at least 30 minutes duration that potentially affect special offices and facilities. Satellite communications providers and wireless communications providers, however, are exempt from this requirement to the extent that it applies to airports. This Further Notice of Proposed Rulemaking is initiated to expand the record in this proceeding to focus specifically on the unique communications needs of airports, particularly from the perspective of homeland security and national defense. In this regard, we request comment on the additional types of airport communications (e.g., wireless, satellite) that should be subject to service disruption reports. These communications may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports (GA) and, if so, what the applicable threshold criteria should be.

Initial Regulatory Flexibility Act Analysis

3. As required by the Regulatory Flexibility Act ("RFA"),¹ the Commission has prepared this Initial

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, 110 Stat. 847 (1996).

Regulatory Flexibility Act Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* ("FNPRM"). Written public comments are requested on this IRFA and must be filed by the January 25, 2005. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the FNPRM including the IRFA (or summaries thereof) will be published in the **Federal Register**.³

A. Need for and Objectives of the Proposed Rules. The Commission seeks to expand the record in this proceeding in order to focus specifically on the unique communications needs of airports. In this regard, the Commission requests comment on the additional types of airport communications (e.g., wireless, satellite) that should be subject to service disruption reports, particularly from the perspective of homeland security and national defense. These communications may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. The Commission also seeks comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports and, if so, what the applicable threshold criteria should be. Potentially, all of the airports in the United States may need to be used by aircraft for emergency landings. The potential loss life or property through commercial aircraft crashes can be catastrophic. The need, however, for communications among non-commercial (as well as commercial) airports and the rest of the United States becomes more apparent in the contexts of general aviation and government aviation in which many non-commercial planes carry, for example, personnel who are essential to national defense and homeland security, as well as government officials from Federal, State, local, and foreign governments. Moreover, all of the airports in the United States are potential launching pads for terrorist activities. As a consequence, it is essential that all personnel at airports throughout the United States be able to access appropriate government and civilian personnel to avert acts of terrorism. Finally, commercial communications links are used by airports to support

navigation, traffic control, maintenance, and restoration. Those commercial communications links need to be functioning continuously. The requirements for which we seek comment would be in addition to those adopted in the *Report and Order* in this proceeding. Those requirements apply to wireline and cable circuit-switched telecommunications with airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage). Outages affecting any of these airports for 30 minutes or more must be reported.

B. Legal Basis. The legal basis for the rule changes proposed in the FNPRM are contained in sections 1, 4(i), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d), and in § 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 1704.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Further Notice May Apply. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ 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).⁷

⁴ 5 U.S.C. 603(b)(3), 604(a)(3).

⁵ *Id.* at 601(6).

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

⁷ 15 U.S.C. 632.

The Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this Report and Order. 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.⁸ The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,⁹ Paging,¹⁰ and Cellular and Other Wireless Telecommunications.¹¹ Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

We have included small incumbent local exchange carriers in this present RFA analysis. As noted, 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."¹² 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.¹³ 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.

Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which

⁸ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (Aug. 2003) (hereinafter "Trends in Telephone Service"). This source uses data that are current as of December 31, 2001.

⁹ 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

¹⁰ 13 CFR 121.201, NAICS code 517211.

¹¹ 13 CFR 121.201, NAICS code 517212.

¹² 15 U.S.C. 632.

¹³ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b).

² 5 U.S.C. 603(a).

³ *Id.*

consists of all such companies having 1,500 or fewer employees.¹⁴ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.¹⁵ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.¹⁶ Thus, under this size standard, the majority of firms can be considered small.

Incumbent Local Exchange Carriers (LECs). 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.¹⁷ According to Commission data,¹⁸ 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.

Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "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.¹⁹ According to Commission data,²⁰ 609 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.

Interexchange Carriers (IXCs). 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.²¹ According to Commission data,²² 261 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.

Wireless Service Providers. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging²³ and Cellular and Other Wireless Telecommunications.²⁴ Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data,²⁵ 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees.²⁶ Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted.

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.²⁷ 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.²⁸ These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.²⁹ 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.³⁰ 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. Based on this information, the Commission concludes that the number of small broadband PCS licenses would have included the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers would have been small

²⁷ See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

²⁸ See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996).

²⁹ See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

³⁰ FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, Second Report and Order, 62 FR 55348 (Oct. 24, 1997).

¹⁴ 13 CFR 121.201 (1997), NAICS code 513310 (changed to 517110 in October 2002).

¹⁵ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000).

¹⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

¹⁷ 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

¹⁸ "Trends in Telephone Service" at Table 5.3.

¹⁹ 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

²⁰ "Trends in Telephone Service" at Table 5.3.

²¹ 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

²² "Trends in Telephone Service" at Table 5.3.

²³ 13 CFR 121.201, North American Industry Classification System (NAICS) code 517211.

²⁴ 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

²⁵ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, (August 2002).

²⁶ *Id.*

entities that could be affected by the rules and policies adopted herein. The results of Auction No. 35, however, were set aside and the licenses previously awarded to NextWave, which had qualified as a small entity, were reinstated. 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.

Narrowband Personal Communications Services. To date, two auctions of narrowband personal communications services (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*.³¹ 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.³² In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) 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 under the Commission's Rules. 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.

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.³³ 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. 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.

Paging. The SBA has developed a small business size standard for Paging, which consists of all such firms having

1,500 or fewer employees.³⁴ According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year.³⁵ Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more.³⁶ Thus, under this size standard, the majority of firms can be considered small.

Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.³⁷ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).³⁸ 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.³⁹ 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 in the Report and Order.

Cable and Other Program Distribution.⁴⁰ This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. 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.⁴¹ 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, the Commission

³⁴ 13 CFR 121.201, NAICS code 517211 (changed from 513321 in October 2002).

³⁵ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513321 (issued October 2000).

³⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

³⁷ The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

³⁸ BETRS is defined in 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

³⁹ 13 CFR 121.201, NAICS code 517212.

⁴⁰ 13 CFR 121.201, North American Industry Classification System (NAICS) code 513220 (changed to 517510 in October 2002).

⁴¹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513220 (issued October 2000).

³¹ In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, ET Docket No. 92-100, PP Docket No. 93-253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

³² See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

³³ 47 CFR 90.814(b)(1).

estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

Cable System Operators (Rate Regulation Standard). The Commission has developed a size standard for small cable system operators for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁴² Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.⁴³ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers.⁴⁴ The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴⁵ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁴⁶ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals

approximately 1450.⁴⁷ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators as defined in the Communications Act of 1934.

Satellite Telecommunications Providers. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has \$12.5 or less in average annual receipts.⁴⁸ For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.⁴⁹ Of this total, 273 firms had annual receipts of under \$10 million, and an additional twenty-four firms had receipts of \$10 million to \$24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

Signaling System 7 (SS7) Providers. The Commission has not developed a definition of small entities applicable to Signaling System 7 providers. We shall apply the SBA's small business size standard for Other Telecommunications, which identifies as small all such companies having \$12.5 million or less in annual receipts.⁵⁰ We believe that there are no more than half-a-dozen SS7 providers and doubt that any of them have annual receipts less than \$12.5 million. In the IRFA to the original *Notice of Proposed Rulemaking* in this proceeding, we had assumed that there may be several SS7 providers that are small businesses which could be affected by the proposed rules and had requested comment on how many SS7 providers exist and on how many of these are small businesses that may be affected by our proposed rules. No comments provided this information. Therefore, we conclude that none of these providers were small businesses. Nonetheless, the Commission shall assume that there may now be several SS7 providers that are small businesses that could be affected by the proposed rules. The Commission requests comment on how

many SS7 providers exist and on how many of these are small businesses that may be affected by our proposed rules.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements. The rule revisions considered in this *FNPRM* could expand the number of airports included as "special offices and facilities" within the Commission's requirements that communications providers report those outages of at least 30 minutes duration that potentially affect special offices and facilities. The *FNPRM* also seeks comment, if the rules are expanded to cover general aviation airports, on what the pertinent threshold reporting criteria should be. Satellite communications and wireless communications are currently exempt from the requirement to report outages potentially affecting those airports that are special offices and facilities. The *FNPRM* therefore seeks comment on what additional types of airport communications (e.g., wireless, satellite) should be subject to service disruption reports, particularly from the perspective of homeland security and national defense. The Commission anticipates that more than 200 outage reports will be filed annually, but estimates that the total number of reports from all reporting sources combined will be substantially less than 1,000 annually. The Commission notes that, occasionally, the proposed outage reporting requirements could require the use of professional skills, including legal and engineering expertise. Without more data, it cannot accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the reporting requirements that are proposed here, the Commission expects that telecommunications providers will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations—and will do so for all service disruptions that potentially affect special offices and facilities. As a consequence, the Commission believes that in the usual case, the only burden associated with the reporting requirements contained in this *FNPRM* will be the time required to notify the Commission and complete the initial and final reports. The Commission anticipates that electronic filing, as adopted in the *Report and Order* in this proceeding, should minimize the amount of time and effort that will be required to comply with the rules that are proposed in this proceeding. In this IFRA, the Commission therefore seeks comment on the types of burdens

⁴² 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket No. 92-266 and 93-215, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

⁴³ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴⁴ 47 CFR 76.901(c).

⁴⁵ 47 U.S.C. 543(m)(2).

⁴⁶ 47 CFR 76.1403(b).

⁴⁷ *Cable TV Investor*, *supra* note 43.

⁴⁸ 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in Oct. 2002).

⁴⁹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 513340 (issued Oct. 2000).

⁵⁰ 13 CFR 121.201, NAICS code 517910.

telecommunications providers will face in complying with the proposed requirements. Entities, especially small businesses and small entities, more generally, are encouraged to quantify the costs and benefits of the proposed reporting requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. Since the inception of the outage-reporting requirements in 1992, the average number of outages reported each year has remained relatively constant at about 200. Since 1992, the substitutability of telecommunications through different media has increased substantially, and our Nation increasingly relies on these substitutes for Homeland Defense and National Security. The Commission believes that the proposed telecommunications outage reporting requirements are minimally necessary to assure that it receives adequate information to perform its statutory responsibilities with respect to the reliability of telecommunications and their infrastructures. Finally, the Commission believes that the proposed requirement that outage reports be filed electronically would significantly reduce the burdens and costs currently associated with manual filing processes.

F. Federal Rules That Might Duplicate, Overlap, or Conflict With the Proposed Rules. None.

Ordering Clauses

4. Pursuant to the authority contained in sections 1, 4(i)-(j), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d), and in Section 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 3504, the Notice of Proposed Rulemaking *is adopted*.

5. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 4

Airports, Communications common carrier, Disruption reports, Reporting and recordkeeping requirements, Special Offices and Facilities, Telecommunication.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04-26161 Filed 11-24-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 679

[Docket No. 041110318-4318-01; I.D. 110504E]

RIN 0648-AS00

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Western Alaska Community Development Quota (CDQ) Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise regulations governing the Western Alaska Community Development Quota (CDQ) Program. These regulatory amendments would simplify the processes for making quota transfers, for authorizing vessels as eligible to participate in the CDQ fisheries, and for obtaining approval of alternative fishing plans. This proposed action is necessary to improve NMFS's ability to administer the CDQ Program effectively and it is intended to further the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Written comments on this proposed rule must be received by December 27, 2004.

ADDRESSES: Send written comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802-1668;

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;

- Fax to 907-586-7557;

- E-mail to CDQ-ADM-0648-AS00@noaa.gov and include in the

subject line of the e-mail comment the document identifier: 0468-AS00;

- Website to the Federal eRulemaking Portal at <http://www.Regulations.gov>

and following the instructions at that site for submitting comments.

Copies of the Categorical Exclusion and Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action may be obtained from any of the addresses stated above.

Send comments on collection-of-information requirements to the same NMFS address and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Also, send comments to David Rostker, OMB, by e-mail at DRostker@omb.eop.gov or by facsimile to 202-395-7285.

FOR FURTHER INFORMATION CONTACT:

Becky Carls, 907-586-7228 or becky.carls@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Background and Need for Action

By design of the Council, the CDQ Program is jointly managed by NMFS and the State of Alaska (State). The CDQ Program provides participating western Alaska fishing communities allocations of groundfish, halibut, and crab, as well as allowances for bycatch of prohibited species (salmon, halibut, and crab) while prosecuting CDQ target fisheries. These communities have formed six non-profit corporations (also known as CDQ groups) to manage and administer the CDQ allocations and economic development projects. The CDQ groups prepare Community Development Plans (CDPs) that describe how CDQ allocations will be used to benefit the participating communities. The CDPs are submitted to the State and NMFS as part of the process for allocating quota among the CDQ groups. Modifications to CDPs for new CDQ projects or other revisions are made through substantial and technical amendments, both of which must be reviewed by the State and approved by NMFS.

As a result of the CDQ Program's expansion and maturation since its implementation in 1992, the Council undertook a comprehensive evaluation of the CDQ Program. In response to that evaluation, the Council recommended Amendment 71 to the FMP in June